

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 24

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 March 2, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr. Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.
16 Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,
17 Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan Villa,
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1 THE COURT: All right. Good morning,
2 everyone. I appreciate everyone being here and on
3 time and ready to go. I was greeted with a fairly
4 large stack of reading this morning, so I am plowing
5 through it, but I don't have anything really to
6 comment.

7 The jury instructions looked about like
8 what I sent back to Albuquerque. I haven't gotten
9 them proofed all the way through, so at least what I
10 have is -- what you have and what I have is, I
11 think, where I am. So I'll be looking at your
12 materials this morning.

13 Is there anything we need to take up
14 before we bring the jury in?

15 How about from the Government, first? Mr.
16 Castellano?

17 MR. CASTELLANO: No, sir.

18 THE COURT: Okay. How about from the
19 defendants? Ms. Jacks?

20 MS. JACKS: Well, Your Honor, I don't know
21 that the Government had finished with Agent Sainato.
22 I guess we're just going to not finish that hearing.

23 THE COURT: Do you feel any need to finish
24 that, Mr. Castellano?

25 MS. ARMIJO: Your Honor, I think I was

1 questioning him at the end.

2 THE COURT: Ms. Armijo.

3 MS. ARMIJO: I think that we could go on
4 with the testimony and have the Court look at it,
5 our response yesterday, and we can just go forward
6 with the --

7 THE COURT: And there may be a time we
8 need to come back and have a hearing on that. I may
9 have some questions. I'm still behind from the
10 reading yesterday, the materials that were given to
11 me.

12 Did you have something else, Ms. Jacks, or
13 did you just need to know that clarification?

14 MS. JACKS: I just needed that
15 clarification. Thank you.

16 THE COURT: How about you, Ms. Fox-Young?

17 MS. FOX-YOUNG: Your Honor, I'll leave any
18 argument for later. But with respect to calling
19 Agent Acee, how would the Court like us to let the
20 jury know --

21 THE COURT: I'm game. Are y'all going to
22 call the other two FBI agents first, or are y'all
23 going to call them at all, or just go right to
24 Mr. Acee?

25 MS. FOX-YOUNG: Your Honor, may we just

1 have a moment to confer?

2 THE COURT: Sure. You bet.

3 MS. FOX-YOUNG: Your Honor, I think all
4 the defendants would like to call Agent Acee first.
5 Since he was on the stand and I was questioning him,
6 I'd like to begin, but I just don't know how to let
7 the jury know we're recalling him.

8 THE COURT: What about if we did this?
9 I'll just throw this out. I'm game for anything.
10 What if I just call on you to say, "Would you like
11 to complete your direct examination of Mr. Acee in
12 your case-in-chief?" How about if I said that?
13 Would that work, or do you want something else?

14 MS. FOX-YOUNG: That's fine with me,
15 Judge.

16 THE COURT: Okay. Let me see if I can do
17 that.

18 All right. If everybody is ready, we'll
19 get the jury lined up. Do we have anything else to
20 discuss? We didn't line them up immediately because
21 we thought y'all might have a little bit more to
22 discuss. So if anybody has got anything to say to
23 me or talk to me or want me to do --

24 MS. FOX-YOUNG: Your Honor, just one more
25 point. I think the Court ordered that the

1 Government produce the additional agent notes
2 pertinent to the cooperating witnesses. We have not
3 received any additional notes at this time.

4 THE COURT: Well, during the discussion
5 yesterday it seemed to me that what Mr. Lowry did
6 was confirm with Mr. Beck that there is not any
7 more, that they've all been produced. Now, we can
8 go back through that, but my impression was that Mr.
9 Lowry agreed with Mr. Beck that all the other
10 cooperating people had been produced.

11 MS. ARMIJO: No, Your Honor, I think that
12 what we had said was that the ones that Mr. Lowry
13 had requested, we produced all of those.

14 THE COURT: Well, we did that. And I
15 think everybody is in agreement on that. But then
16 after that was over, we went through the broader
17 request that Ms. Fox-Young had, and I think Mr.
18 Lowry confirmed with Mr. Beck through
19 representations that we have had produced by the
20 Government all the what I'll call testifying
21 witnesses, any statements that fall within my
22 definition of what a statement is.

23 MS. ARMIJO: And Your Honor, that's what
24 we had said that we were going to request overnight.
25 And it should be here probably by -- when we left

1 our office before 8:00 a.m., our paralegal said that
2 she would have it on CDs and bring it within the
3 hour. Because we had to get them from Albuquerque
4 even. That was for the remaining cooperator
5 testifying that Mr. Lowry had not asked for.

6 MR. LOWRY: And Your Honor, I agree with
7 that. What I initially requested for were just for
8 the three witnesses: Lupe Urquizo, Timothy
9 Martinez, and Mario Rodriguez. And we confirmed
10 that. Now, what the United States did represent was
11 they would make a good faith effort to reach out to
12 the task force officers Cupit and Mark Myers.

13 THE COURT: Oh, yes. That's right. Task
14 force.

15 MR. LOWRY: And the United States agreed
16 to provide the field notes for all of the testifying
17 witnesses, which we are anticipating.

18 MS. ARMIJO: All testifying cooperators
19 for the United States.

20 MR. LOWRY: Fair enough.

21 THE COURT: Does that work, Ms. Fox-Young,
22 then?

23 MS. FOX-YOUNG: Your Honor, I'd just like
24 to make a record that the defense doesn't have to
25 ask for those notes. The Court has ordered them as

1 part of Jencks and under, I think, the Harry case
2 and the Fred case and -- I can give the Court other
3 citations to Tenth Circuit law. The Government is
4 required to produce those notes. We've completed
5 cross-examination of all these cooperators. We are
6 now at the end of our case. We have an agreement to
7 put Agent Acee back on the stand, and we still don't
8 have those notes, and the Court ordered them again
9 yesterday. The defense is absolutely prejudiced. I
10 don't know what's in them, but I don't know how we
11 can proceed without them, and I don't think there
12 has been adequate explanation as to why they haven't
13 been produced.

14 THE COURT: Well, they're on their way,
15 and let's see where we get this morning.

16 MS. JACKS: Sanchez joins.
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1 THE COURT: All right. All rise.

2 (The jury entered the courtroom.)

3 THE COURT: All right. Everyone be
4 seated.

5 Good Friday morning to everyone. I
6 appreciate everybody being back and ready to go. I
7 appreciate the parties and counsel getting here
8 early so we can discuss a few things and be ready
9 for y'all pretty much on time. So I appreciate the
10 way you've worked for us the last five weeks.
11 You've been a remarkable group, and I appreciate
12 everything you've done for us.

13 All right.

14 Ms. Fox-Young, I think you had Mr. Acee on
15 the stand in your case-in-chief, you're going to
16 complete your direct examination.

17 So, Mr. Acee, if you'll return to the
18 witness stand, I'll remind you that you're still
19 under oath. Ms. Fox-Young, if you wish to continue
20 your direct examination of Mr. Acee, you may do so
21 at this time.

22 MS. FOX-YOUNG: Thank you, Your Honor.

23 THE COURT: Ms. Fox-Young.
24
25

1 BRYAN ACEE,
2 after having been previously duly sworn under
3 oath, was questioned, and continued testifying
4 as follows:

5 CONTINUED DIRECT EXAMINATION
6 BY MS. FOX-YOUNG:

7 Q. Good morning, Agent Acee.

8 A. Good morning.

9 Q. Agent Acee, do you recall that when you
10 were last on the stand, you answered some questions
11 about Mario Rodriguez?

12 A. Yes, ma'am.

13 Q. Okay. I'd like to ask you a couple more.
14 Do you remember whether or not you learned, in the
15 course of your investigation of this case, whether
16 Mario Rodriguez was in charge of blue pod?

17 A. Yes.

18 Q. You learned whether he was?

19 A. I had heard things along those lines, yes.

20 Q. In fact, you learned that he was in charge
21 of blue pod, didn't you?

22 A. Not exclusively, but he and Mr. Sanchez
23 were.

24 Q. You don't dispute that you learned that
25 Mario Rodriguez was in charge of blue pod?

1 A. I don't dispute that.

2 Q. And you also learned, through the course
3 of your investigation, that there were some specific
4 reasons why Mario Rodriguez put in a lot of work for
5 the gang, isn't that right?

6 A. Yes.

7 Q. And wasn't one of those specific reasons
8 because of his history of sex offenses?

9 A. That may have played into it.

10 Q. Well, in fact you know it played into it,
11 don't you?

12 A. I think there were a few reasons, that
13 being one of them.

14 Q. Well, are you aware, Agent Acee, that
15 yesterday some voluminous notes that you had
16 authored were produced to the defense?

17 A. Yes, I produced them.

18 Q. Okay. You produced them to the defense
19 yesterday?

20 A. For the Government, yes.

21 Q. Okay. Remind me how long this
22 investigation has been going on.

23 A. About three years.

24 Q. All right. And you recall that you
25 authored notes with regard to debriefs of Timothy

1 Martinez, a/k/a Red?

2 A. Yes.

3 Q. And you recall, do you not, that you
4 learned from Timothy Martinez that Blue, or Mario
5 Rodriguez, was highly motivated to put in work
6 because of the hot sauce incident and the sex
7 offenses?

8 A. Yes.

9 Q. And the Javier Molina homicide could be
10 considered putting in work for Mario Rodriguez,
11 right?

12 A. Absolutely.

13 Q. Are you also aware, Agent Acee, that
14 nearly 1,000 pages of documents purported to have
15 been in the possession of Mario Rodriguez were
16 produced to the defense two days ago?

17 A. Yes.

18 Q. Have you had an opportunity -- well, have
19 you reviewed those documents?

20 A. No.

21 Q. Do you know how long the FBI has been in
22 possession of those documents?

23 A. Yes.

24 Q. And can you tell the jury how long the FBI
25 has had those documents?

1 A. FBI Agent Joe Sainato took possession of
2 those documents in approximately June of 2017.

3 Q. Okay. So what is that? Eight or nine
4 months?

5 A. Yes.

6 Q. But in that eight- or nine-month period,
7 you've never looked at those 1,000 pages of
8 documents from Mario Rodriguez?

9 A. I didn't know they existed until Sunday,
10 this last Sunday.

11 Q. Okay. And you're the case agent in this
12 case, right?

13 A. I am.

14 Q. And I think you told me and told the jury
15 a few days ago that -- are there three or four other
16 agents working this case with you?

17 A. There are three other FBI agents that were
18 assigned this case upon their graduation from the
19 Academy, so they've been helping me since then.

20 Q. Okay. One of those agents is Agent
21 Sainato, who you just testified personally retrieved
22 these documents last summer?

23 A. Yes, ma'am.

24 Q. And do you know if Agent Sainato ever
25 reviewed the documents?

1 A. Yes, but not until very recently, as in
2 Sunday.

3 Q. Okay. And so --

4 A. Excuse me. I think he represented that he
5 had done a cursory search, but he hadn't done what I
6 would call an in-depth review of those until Sunday.

7 Q. Well, isn't it true that Agent Sainato's
8 purported reason for taking those documents in the
9 first place from the Penitentiary of New Mexico is
10 so that he could search them?

11 A. Yes.

12 Q. Outside the Penitentiary of New Mexico?

13 A. Yes.

14 Q. And isn't it true that those documents in
15 fact remained, according to Agent Sainato,
16 underneath his desk for eight months?

17 A. Yes.

18 Q. After he did a search of them?

19 A. They remained under his desk for at least
20 eight months.

21 Q. And to this day, you have not looked at
22 these documents?

23 A. No.

24 Q. But Agent Sainato works for you on this
25 case, right?

1 A. Yes, ma'am.

2 Q. And so these nearly 1,000 pages of
3 documents that were produced two days ago, after the
4 Government rested, you don't know what they contain?

5 A. I think they were produced on Monday. I
6 have --

7 Q. Do you know when they were produced?

8 A. I believe they were produced on Monday.

9 Q. You don't know for certain because you
10 don't make the production, right?

11 A. I'm just trying to remember what day I saw
12 them delivered to your desks. I thought it was
13 Monday. It may have been Tuesday.

14 Q. You still haven't looked at them?

15 A. Other than what was presented yesterday
16 afternoon, no, in court. No.

17 Q. Would you think it would be important for
18 the FBI to look at 1,000 pages of documents that
19 came from Mario Rodriguez, that were in his personal
20 possession?

21 A. Yes. It's important for us to look at
22 everything that comes across our desks.

23 MS. FOX-YOUNG: Your Honor, I'd ask for a
24 stipulation from the Government that these documents
25 were produced to the defense on Wednesday.

1 THE COURT: Does the Government wish to
2 respond?

3 MS. JACKS: I would ask that it be
4 Wednesday at 2:00 p.m.

5 THE COURT: Well, let's let the Government
6 respond first.

7 MR. BECK: I think it's inaccurate to say
8 that the Government produced the documents Wednesday
9 at 2:00. I think that a document from that was
10 produced Sunday evening. I think that the rest of
11 the documents, aside from the document produced
12 Sunday evening, were produced to the defense
13 Wednesday around 2:00 p.m. So that would be an
14 accurate stipulation.

15 MS. FOX-YOUNG: Let me propose a different
16 stipulation, Your Honor. I'd ask for a stipulation
17 that pages 980 of documents, purportedly from Mario
18 Rodriguez, were produced Wednesday at 2:00 p.m. to
19 the defense.

20 THE COURT: Do you want to accept that
21 stipulation, Mr. Beck?

22 MR. BECK: I don't know that there were
23 980 pages produced. And I know that 980 pages, if
24 they were produced, were not all from Mario
25 Rodriguez' property. So no.

1 THE COURT: All right. So I don't believe
2 you have a stipulation, Ms. Fox-Young.

3 MS. FOX-YOUNG: I'm sorry, Your Honor?

4 THE COURT: You don't have a stipulation.

5 MS. FOX-YOUNG: Okay. Will the Government
6 stipulate that the only document from this set of
7 nearly 1,000 pages that was produced to the defense
8 on Sunday is Defendants' Exhibit FV?

9 MR. BECK: Yes.

10 THE COURT: All right.

11 BY MS. FOX-YOUNG:

12 Q. All right. In any event, Agent Acee, you
13 haven't looked at them?

14 A. I have not looked at all of them, no.

15 Q. Okay. And so is it accurate to say that
16 you don't know whether these documents detail Mario
17 Rodriguez having thrived on being feared?

18 A. I saw some writings about that yesterday.

19 Q. I thought you hadn't looked at them?

20 A. They were up there on the screen.

21 Q. Okay.

22 A. And the attorneys were -- the defense
23 attorneys were pointing those out. They were up
24 there on the screen.

25 Q. So you are aware of Mario Rodriguez'

1 musings that he thrived on being feared?

2 A. I saw a writing that indicated that.

3 Q. You don't know how many times in 980 pages
4 there is indication that Mario Rodriguez thrived on
5 being feared?

6 A. No.

7 Q. And are you aware that Mario Rodriguez
8 detailed his obsession with cutting ears off in
9 these documents?

10 A. No. I haven't seen anything like that.

11 Q. Okay. You don't know how many times Mario
12 Rodriguez talked about cutting ears off in these
13 documents?

14 A. I've not seen anything like that.

15 MR. CASTELLANO: Your Honor, we have no
16 objection to the admission of the 980 pages that
17 were in Mr. Rodriguez' property, and the jury can
18 look through those documents if they so choose.

19 So we have no objection to the admission
20 of all of those documents.

21 THE COURT: Do you want to introduce those
22 or not?

23 MS. FOX-YOUNG: I'm not moving their
24 admission at this time, Your Honor.

25 THE COURT: Okay.

1 BY MS. FOX-YOUNG:

2 Q. And are you aware whether these 980 pages
3 detail Mario Rodriguez' obsession with sex offenses?

4 A. No.

5 Q. You don't know about that?

6 A. I'm not aware of that.

7 Q. Do you know if they detail Mario
8 Rodriguez's desire to butcher and rape other
9 individuals?

10 MR. CASTELLANO: I'm going to object based
11 on foundation. The agent says he hasn't reviewed
12 these, so he wouldn't know the contents of the
13 document.

14 MS. FOX-YOUNG: Your Honor, the agent says
15 he has reviewed some of the documents, apparently.

16 THE COURT: I think it's a mixed bag, so I
17 think I've got to let Ms. Fox-Young do this because
18 he has seen certain documents on the screen.
19 Overruled.

20 BY MS. FOX-YOUNG:

21 A. I haven't seen anything related to that.

22 Q. And so you don't know how many times
23 throughout these documents Mario Rodriguez talks
24 about butchering and raping people?

25 A. No.

1 Q. Do you know whether these documents
2 include descriptions of threats that Mario Rodriguez
3 has made against other people?

4 A. I think I saw one or two yesterday.

5 Q. Okay. So you're aware of one or two times
6 in the documents where Mario Rodriguez talks about
7 threatening people?

8 A. Yes.

9 Q. But you don't know how many times in these
10 980 pages he talks about threatening people?

11 A. No.

12 Q. And how many times he was written up for
13 assaults and threats?

14 A. He has a few write-ups for assaults.

15 Q. And do you know whether Mario Rodriguez,
16 in these documents, associated threats with his
17 reputation for being feared?

18 A. No.

19 Q. You don't know that. Are you aware, Agent
20 Acee, of whether or not Mario Rodriguez was jumping
21 out of his skin to kill Javier Molina, couldn't wait
22 to do it?

23 A. I have not seen anything that represents
24 that.

25 Q. You don't know anything about that?

1 A. I know about the homicide, but
2 specifically whether or not he was jumping out of
3 his skin to participate, I've not seen anything like
4 that.

5 Q. So it's your testimony that you have never
6 been informed that Mario Rodriguez couldn't wait to
7 kill Javier Molina?

8 A. You're saying it in different terms now.
9 But not off the top of my head, no.

10 Q. It's your testimony that you never learned
11 that?

12 A. I don't dispute that he was motivated to,
13 but in the terms you're saying it, you'd have to
14 refresh my memory.

15 Q. Do you remember debriefing Lupe Urquizo,
16 a/k/a Marijuano, on March 6, 2017?

17 A. Yes.

18 Q. And you took notes in that debrief, didn't
19 you?

20 A. I did.

21 Q. And those notes were produced to defense
22 two days ago, weren't they? Or I'm sorry. They
23 were produced yesterday at 9:18 in the morning,
24 weren't they?

25 A. They were produced when I was asked to

1 produce them. I'm not sure what time you got them.

2 Q. Yesterday at 9:18 in the morning, right?

3 A. I don't know when you received them.

4 Q. And some of those notes, in fact, detailed
5 that Blue -- this is from Lupe Urquizo -- Blue
6 couldn't wait to move on Javier Molina; isn't that
7 right?

8 A. Yes.

9 Q. Do you know who brought Mario Rodriguez
10 into the SNM?

11 A. I don't remember all the members. I
12 remember one right now.

13 Q. Who do you remember?

14 A. Arturo Garcia, Shotgun.

15 Q. Do you remember that Billy Cordova brought
16 Mario Rodriguez into the SNM?

17 A. No. I just remember Arturo Garcia.

18 Q. Would it refresh your memory if I showed
19 you your notes, also produced yesterday at 9:18
20 a.m., from a debrief of Timothy Martinez, a/k/a Red,
21 on December 29th of 2016?

22 A. Yes.

23 MS. FOX-YOUNG: Your Honor, may I approach
24 the witness?

25 THE COURT: You may.

1 BY MS. FOX-YOUNG:

2 Q. Agent Acee, are these your notes from
3 December 29, 2016, on a debrief of Red?

4 A. Yes.

5 Q. All right. Please take a look at this
6 page. Did you write this page?

7 A. I did.

8 Q. And tell me whether this refreshes your
9 recollection as to that question.

10 A. Yes, ma'am.

11 Q. Agent Acee, do you remember now whether
12 Billy Cordova recruited Mario Rodriguez into the
13 SNM?

14 A. Yes, according to --

15 Q. He did, right?

16 A. Yes.

17 Q. Okay. And you learned that December 29th
18 of 2016?

19 A. Yes. That's according to Red, Timothy
20 Martinez. That's who brought Rodriguez in.

21 Q. Who is Chuco?

22 A. Mandel Parker.

23 Q. Do you remember learning about Chuco's
24 presence at a shooting, a shooting that Billy
25 Cordova committed or engaged in?

1 A. No. You'd have to refresh my memory.

2 Sorry.

3 Q. Do you know if notes from a debrief of Red
4 on January 26, 2017, were also produced to the
5 defense yesterday at 9:18 in the morning?

6 A. I imagine they were. Are they my notes?

7 Q. Do you know?

8 A. I don't know if those were my notes.

9 Q. In any event, you don't know if Billy
10 Cordova shot somebody while Chuco was present?

11 A. No.

12 Q. And you don't know what shooting that was?

13 A. No.

14 Q. You're the agent who closed Billy Cordova
15 as a government witness, right?

16 A. Yes.

17 Q. Do you know when that happened?

18 A. It happened immediately after my learning
19 that -- about the sex incidents up at PNM.

20 Q. Do you know when he was actually closed?

21 A. No.

22 Q. Would it refresh your recollection if I
23 showed you a portion of his contract with that
24 indication?

25 A. Yes.

1 MS. FOX-YOUNG: Your Honor, may I approach
2 the witness?

3 THE COURT: You may.

4 MS. FOX-YOUNG: And for the record, this
5 is Bates 41665.

6 BY MS. FOX-YOUNG:

7 Q. Agent Acee, is this a document indicating
8 closure of Billy Cordova?

9 A. May I look at the next page?

10 Q. Yes, you may.

11 A. The source numbers are blocked out, but I
12 think it is, because I sent this letter to the four
13 guys that were involved in sex acts up there.

14 Q. And so does this refresh your recollection
15 on this question?

16 A. Yes.

17 Q. So do you know now when you closed Billy
18 Cordova?

19 A. I closed him around January 13, 2017. I
20 base that on the letter you just showed me.

21 Q. Okay. And it's your testimony that after
22 that time -- and you testified about this when I
23 asked you questions a few days ago. Is it your
24 testimony that after that time, Billy Cordova did no
25 more work for the FBI?

1 A. No.

2 Q. Okay. So he did do more work for the FBI
3 after you closed him?

4 A. He did work for the STIU, which we're
5 partnered with, so I'm just hesitating to say -- I
6 understand he made an additional recording, which at
7 the time he made the recording I didn't know about.
8 I subsequently learned about in court here.

9 Q. So it's your testimony that after he was
10 closed, he continued to do work for the team the FBI
11 works on?

12 A. Yes, in a separate case. But yes, to
13 answer your question.

14 Q. So he wasn't really closed, right?

15 A. No, he was closed.

16 Q. How can a closed government witness
17 continue doing work for the FBI?

18 A. Well, I can explain if you'd like me to.

19 Q. Let me just ask you this: For the work
20 that Billy Cordova did, were there FBI reports like
21 you've already described generated?

22 A. For the work after he was closed?

23 Q. Yes.

24 A. Is that what you're asking?

25 Q. Yes.

1 A. That's a better question for Agent Stemo,
2 but I believe she submitted a report. Because he
3 obtained a recording up at the penitentiary.

4 Q. So after Billy Cordova was closed in
5 January of 2017, it's your testimony that he did
6 continue working and that FBI reports for his work
7 were generated, right?

8 A. At least one. I think there is a
9 recording and a report.

10 Q. And you think Agent Stemo -- she's part of
11 your team of agents, right, on this case?

12 A. Yes, ma'am.

13 Q. And you think she did a report documenting
14 that work for the FBI?

15 A. Yes. Not in this case file, though. A
16 different prison gang.

17 Q. And so you know, then -- you would agree
18 with me, then, that in April 2017, three months
19 after you say Billy Cordova was closed, he was
20 working for the FBI?

21 A. No, I don't agree with that. I agree that
22 there was a recording made. I don't believe the FBI
23 tasked him with doing that. I think the STIU did,
24 and then they delivered to us a recording, and she
25 needed to document the fact that that was done.

1 Q. You would agree with me that three months
2 after Billy Cordova was closed, your agent, Agent
3 Stemo, was writing -- wrote a report with regard to
4 Billy Cordova's work for the FBI?

5 A. All of that except that it was for the
6 FBI. I think it was for the STIU. We just received
7 a copy of it because it's good evidence.

8 Q. Is it your practice to do FBI reports for
9 agency's work unrelated to the FBI?

10 A. No. There's an open case on the prison
11 gang that he did a recording on.

12 Q. Okay. Thank you, Agent Acee.

13 Have you ever made a determination about
14 whether Billy Cordova continued to commit crimes
15 after going to work for the Government?

16 A. As I sit here today, I have, yes.

17 Q. What is that determination?

18 A. He used drugs while he was an FBI
19 informant, and he brought a weapon to court. Those
20 are, I believe, the two incidents I'm aware of.

21 Q. Have you made a determination about
22 whether Billy Cordova will continue to commit crimes
23 today and going forward?

24 MR. CASTELLANO: Objection, relevance.

25 THE COURT: Well, it's a yes/no question

1 at this point, whether he's reached a conclusion.

2 BY MS. FOX-YOUNG:

3 A. No.

4 Q. You haven't made a determination?

5 A. Well, I have an opinion, but I cannot tell
6 what he's going to do in the future.

7 Q. And do you have information obtained
8 through the course of this investigation, with
9 regard to that question, as to whether or not Billy
10 Cordova will continue with his criminal conduct on
11 the streets?

12 MR. CASTELLANO: Objection, calls for
13 speculation.

14 MS. FOX-YOUNG: Your Honor, it's a yes/no
15 question.

16 THE COURT: Well, I think these are if
17 he's reached some conclusion.

18 MS. FOX-YOUNG: Your Honor, my question
19 is: Does he have information, obtained through the
20 course of this investigation, about whether Billy
21 Cordova will continue to commit crimes on the
22 streets?

23 THE COURT: I still think the way I worded
24 it is what you're asking. So I was overruling the
25 objection.

1 MS. FOX-YOUNG: Thank you, Your Honor.

2 THE COURT: Are you arguing with my
3 ruling?

4 MS. FOX-YOUNG: I just want to make sure
5 that the witness understood the question. And no,
6 Your Honor, I'm not arguing with your ruling.

7 BY MS. FOX-YOUNG:

8 A. No.

9 Q. You haven't obtained that information?

10 A. I don't believe so.

11 Q. So you don't recall interviewing Red and
12 documenting in your notes on January 26, 2017, that
13 Billy Cordova still thinks he can go back to
14 Albuquerque and represent -- he still wants to be a
15 gangster, but that he's a federal rat?

16 MR. CASTELLANO: Calls for hearsay.

17 Q. You don't remember that?

18 A. I do.

19 THE COURT: Again, it's a yes/no question,
20 just whether you've done the interview?

21 A. I did the interview, yes.

22 Q. You don't remember that?

23 MR. CASTELLANO: Objection, calls for
24 hearsay.

25 THE COURT: Well, it's a different

1 question. I'm confused. Why don't you ask another
2 question at this point.

3 BY MS. FOX-YOUNG:

4 Q. Agent Acee, do you remember gathering that
5 information as to Billy Cordova in your January 26,
6 2017, interview?

7 A. Yes, but you're stating it out of context.

8 Q. Would it refresh your memory if you saw
9 the detail?

10 A. Please.

11 MS. FOX-YOUNG: Your Honor, may I approach
12 the witness?

13 THE COURT: You may.

14 Q. Agent Acee, are these your notes produced
15 yesterday at 9:18 a.m. from a January 26, 2017,
16 interview of Red?

17 A. These are my notes.

18 Q. All right. Take a look at this page and
19 tell me if that refreshes your memory?

20 A. Yes.

21 Q. So having looked at this document, do you
22 recall gaining the information about Billy Cordova
23 wanting to go back to the streets and wanting to be
24 a gangster and represent?

25 A. Yes, but he's saying he wants to work for

1 us. Like he wants to be a gangster on the street as
2 an informant. That's what I believe that says.

3 Q. You recall learning that Billy Cordova
4 wants to go back to Albuquerque and represent? He
5 still wants to be gangster, but he's a federal rat?

6 A. Yes, and I --

7 MS. FOX-YOUNG: Thank you, Your Honor. No
8 further questions.

9 THE COURT: Thank you, Ms. Fox-Young. All
10 right. Do any other defendants have direct
11 examination of Mr. Acee?

12 MS. JACKS: I do, Your Honor, but I think
13 I'm queued up last.

14 MS. BHALLA: Yes, Your Honor, I have a few
15 questions.

16 DIRECT EXAMINATION

17 BY MS. BHALLA:

18 Q. Good morning, Agent.

19 A. Good morning.

20 Q. So I think what you testified to with Ms.
21 Fox-Young was that you were here yesterday for the
22 hearing where we discussed some of the property
23 belonging to Mario Rodriguez?

24 A. I was here, yes.

25 Q. And you saw some of the documents that

1 were put up on the screen?

2 A. Yes.

3 Q. Okay. And would you agree with me that
4 some of the documents that we put up on the screen
5 yesterday clearly was property that belonged to
6 other individuals?

7 A. I think at one time, yes.

8 Q. Okay. And, in fact, the other individuals
9 were other informants in this case; namely, Timothy
10 Martinez?

11 A. I saw some property that was probably
12 Timothy's at one time.

13 Q. Okay. And one of the things that you saw
14 was a letter from Timothy Martinez's -- a woman
15 named Robin. I presume that that's Timothy
16 Martinez's wife.

17 A. It's not. I think it's an ex. Could be
18 an ex-wife. I think it was a girlfriend.

19 Q. Okay, so an ex-girlfriend. Thank you for
20 clearing that up. And Robin sent that letter to
21 Timothy Martinez, correct?

22 A. Yes.

23 Q. And in that letter -- that letter was
24 dated after the Javier Molina murder, was it not?

25 A. No. I'll have to take your

1 representation. I didn't catch the date.

2 Q. Okay.

3 MS. BHALLA: And, Your Honor, I apologize.
4 I moved those in yesterday. Could I possibly get a
5 copy from Ms. Standridge?

6 THE COURT: You need what, Ms. Bhalla?

7 MS. BHALLA: I have it, Your Honor. Thank
8 you. I'm sorry, Agent Acee. Give me a second.

9 Your Honor, may I approach the witness?

10 THE COURT: You may.

11 BY MS. BHALLA:

12 Q. Agent Acee, do you mind just flipping
13 through and confirming that there are three letters
14 from Robin to Timothy Martinez?

15 A. There are.

16 Q. Okay. And can you confirm that all three
17 letters are dated after the Javier Molina murder,
18 please?

19 A. All three are dated after the Javier
20 Molina homicide.

21 Q. Would you agree with me that some of the
22 information that's contained in those letters is
23 information that the statements weren't matching up
24 with the discovery; that some of the statements that
25 were made weren't matching up with the discovery?

1 Do you recall looking at statements like that in
2 those letters yesterday?

3 MR. CASTELLANO: Objection, calls for
4 speculation.

5 MS. BHALLA: He was here yesterday, Your
6 Honor.

7 THE COURT: Well, if he can agree, I'll
8 allow him to testify. Overruled.

9 BY MS. BHALLA:

10 A. I recall at least one.

11 Q. Okay. And would you agree with me that
12 these documents were contained in the FBI office for
13 about the last eight months?

14 A. Yes.

15 MS. BHALLA: May I have a moment, Your
16 Honor?

17 THE COURT: You may.

18 Q. And when you were here yesterday at this
19 hearing and we were going through some of the
20 property that was contained in Mario Rodriguez'
21 possession, or his property, would you also agree
22 with me that there were letters sent to the county
23 clerk's office, requesting discovery in other cases?

24 A. I saw a letter like that, yes.

25 Q. And you don't know what the other cases

1 were about, do you?

2 A. I have an idea, but I can't say for sure.

3 Q. Right. Isn't that something that you
4 would want to know, as part of your investigation?

5 A. Yes, it is.

6 MS. BHALLA: Thank you, Your Honor. I
7 pass the witness.

8 THE COURT: Thank you, Ms. Bhalla.

9 Ms. Jacks, do you have direct examination
10 of Mr. Acee?

11 MS. JACKS: I do.

12 THE COURT: Ms. Jacks.

13 DIRECT EXAMINATION

14 BY MS. JACKS:

15 Q. So, Agent Acee, I have a number of topics
16 I want to talk to you about. I'm just going to try
17 to direct you so that you can follow. I can't say
18 they're organized in any logical fashion.

19 So I want to start asking you just a
20 couple of questions about Ronald Sanchez. You
21 actually sat down and spoke with Ronald Sanchez?

22 A. I have on two occasions.

23 Q. And what is his relation to Daniel
24 Sanchez?

25 A. His brother.

1 Q. Is he the older brother?

2 A. I don't recall.

3 Q. Is Ronald Sanchez a validated or suspected
4 member of SNM?

5 A. He's not validated.

6 Q. And was Ronald Sanchez living in blue pod
7 at the time of the Molina homicide?

8 A. Yes.

9 Q. You were asked some questions by the
10 Government in their case about the crime that Javier
11 Molina had committed, that this paperwork was
12 supposedly related to. Do you recall those
13 questions?

14 A. Yes.

15 Q. And I think, if my notes are right, you
16 said that the crime was a strong-armed robbery?

17 A. Yes.

18 Q. Okay. That's terms that Government
19 witnesses have used as well, right? Strong-armed
20 robbery?

21 A. I'm not sure. I've heard them describe it
22 as a robbery or a purse-snatching.

23 Q. Can you tell us, in your mind, anyway,
24 what is a strong-armed robbery?

25 A. It's the taking of property from a person

1 by force or fear. I use the term "strong-armed"
2 from my law enforcement understanding, that it was
3 without a weapon, so just through intimidation or
4 physical force.

5 Q. Right. So, like -- I think the key is no
6 weapon; just the force necessary to take the
7 property.

8 A. Yes, ma'am.

9 Q. And the typical or classic strong-armed
10 robbery is somebody pulls a woman's purse off of her
11 shoulder as she's walking down the street?

12 A. Yes.

13 Q. And is that the crime that Javier Molina
14 was -- is that the crime Javier Molina committed
15 that was the subject of the paperwork?

16 A. No.

17 Q. What was the crime? Because I thought
18 that's what you testified to, that the paperwork was
19 regarding a strong-armed robbery that Mr. Molina had
20 participated in.

21 A. Well, the first part of that is correct.
22 The crime being investigated by the Las Cruces
23 police department was a robbery, which I described
24 as a strong-armed robbery. Molina, I don't believe,
25 is the one that took the purse. I believe his

1 vehicle was used and he was at the scene.

2 Q. So your recollection is that he aided and
3 abetted that crime?

4 A. Yes, ma'am.

5 Q. Now, that's based on a review of some
6 police reports or something?

7 A. Yes.

8 Q. Have you looked at any court documents
9 regarding Javier Molina?

10 A. I don't believe I have.

11 MS. JACKS: Your Honor, I have a Grand
12 Jury indictment for Javier Molina regarding a
13 robbery that took place on July 28, 2009. May I
14 approach the witness?

15 THE COURT: You may.

16 MS. JACKS: Why don't we mark this defense
17 next in order, F as in Frank, Z as in zebra.

18 Your Honor, I just conferred with the
19 Government. I don't believe there is an objection.
20 I move to admit this Exhibit FZ.

21 THE COURT: Any objection, Mr. Castellano?

22 MR. CASTELLANO: No objection. I just ask
23 that the personal information be redacted. I think
24 there's a date of birth and a Social Security
25 number.

1 MS. JACKS: Correct. Page 2 has some
2 personal information regarding Mr. Molina, and I'll
3 redact that after my examination, and I won't be
4 showing that to the jury.

5 THE COURT: All right. Anybody else have
6 any objection? Not hearing or seeing anything,
7 Defendants' Exhibit FZ will be admitted into
8 evidence.

9 (Defendants' Exhibit FZ admitted.)

10 BY MS. JACKS:

11 Q. Agent Acee, this is a court document, an
12 indictment of Mr. Molina for robbery on July 28,
13 2009. Do you see that?

14 A. Yes, ma'am.

15 Q. And this doesn't charge a strong-armed
16 robbery, does it?

17 A. No.

18 Q. What kind of robbery does it charge?

19 A. Armed robbery with a firearm.

20 Q. And I think you testified to the jury, or
21 told the jury when the Government asked you
22 questions, that in connection with the case that
23 this paperwork was supposedly on, that the object of
24 the theft was a purse; is that right?

25 A. I said that I thought it was, yes.

1 Q. Do you know?

2 A. I don't.

3 Q. And, in fact, the object of the armed
4 robbery was a deposit bag, a business deposit bag
5 that had the bank deposits for the day in it, wasn't
6 it?

7 A. Wasn't that in the purse? I thought
8 that's how I remembered reading it. But yes.

9 Q. A woman leaving World Finance with the
10 day's deposits was robbed of the bank bag?

11 A. Of the bank bag which I think was in her
12 purse.

13 Q. So when Government witnesses have used the
14 term "strong-armed robbery" and said that the
15 paperwork was regarding a strong-armed robbery,
16 that's not consistent with the robbery that Mr.
17 Molina was convicted of, is it?

18 A. I'm the only one, I think, that I've heard
19 say "strong-armed robbery." But a strong-armed
20 robbery is not the same as a robbery with a firearm.

21 Q. And Mr. Molina was convicted of a robbery
22 with a firearm?

23 A. That, I'm not sure of.

24 Q. Well, as part of your investigation did
25 you examine any court documents to see?

1 A. No. I just read Javier Molina's
2 statements and the reports, the police reports. I
3 didn't track his case through the court system.

4 Q. Well, you'll agree that the exhibit I just
5 showed you shows that he was indicted by the Grand
6 Jury for robbery with a firearm?

7 A. I agree with that.

8 Q. And he subsequently ended up in New Mexico
9 State Prison?

10 A. Yes.

11 Q. Now, you were asked some questions, when
12 the Government was questioning you at the end of
13 their case, about the process of interviewing
14 Government witnesses?

15 A. Yes.

16 Q. And I think you talked about how you -- I
17 think the term you used was that you "laser focused"
18 on the events as the trial got closer?

19 A. I think I said that the Assistant U.S.
20 Attorneys laser focused, yes.

21 Q. But you would agree with me that, first of
22 all, when you interview somebody that's a potential
23 government witness, one of the things you want to do
24 is document what they knew and when they knew it?

25 A. Yes.

1 Q. And you want to get as much information as
2 possible out of them before corrupting influences
3 could affect their testimony?

4 A. I want to get as much information out of
5 them.

6 Q. And when you sit down with these
7 witnesses, you actually block out a large portion of
8 the day so that you can go through, in an unhurried
9 fashion, as many questions that you have about what
10 you think it is they know?

11 A. That's ideal. That's not always possible.

12 Q. But you've done that in this case?

13 A. In some cases we were able to do that,
14 yes.

15 Q. And one of the things that you actually
16 used when you questioned potential Government
17 witnesses, you had a list of 213 questions, didn't
18 you?

19 A. My questionnaire, yes.

20 Q. And you used that questionnaire when you
21 talked to the witnesses, to try to cover every topic
22 that you thought was important when you debriefed a
23 witness?

24 A. Yes.

25 Q. And some of those questions include

1 question 107: Did Daniel Sanchez ever talk to you
2 about the Molina homicide; and if so, what did he
3 say?

4 A. That was one of the questions.

5 Q. So that's one of the questions that you
6 regularly asked a potential government witness when
7 you sat down with them to debrief them?

8 A. Yes.

9 Q. And question 142: Do you have any
10 knowledge of Daniel Sanchez committing or planning
11 any assaults or murders; and if so, provide details?

12 A. Yes.

13 Q. And question 146: What role did Daniel
14 Sanchez play in the murder of Javier Molina?

15 A. Yes.

16 Q. And finally, question 213: Do you have
17 any additional information that you think FBI case
18 agents should be aware of?

19 A. Yes.

20 Q. So the bottom line is, when you sit down
21 with a potential Government witness to try to find
22 out what they know, you approach those interviews in
23 a methodical and organized manner?

24 A. Try to.

25 Q. And you try to cover all the topics that

1 might be relevant to the case, in particular this
2 case that you were investigating?

3 A. Yes.

4 Q. After you speak to the witness, you
5 prepare what's called an FBI-302, a report of the
6 interview?

7 A. Yes.

8 Q. When you make those reports, do you try to
9 include everything that's significant that the
10 witness says about the offense that you're
11 investigating?

12 A. Yes.

13 Q. And part of the reason -- part of the
14 reason for that is to document, officially document
15 everything of significance that a witness told you
16 at a particular point in time?

17 A. Yes.

18 Q. So that if later a defense lawyer says,
19 "Wait a second, he never said that," you can prove
20 that in fact he did?

21 A. Yes.

22 Q. All right. I want to move to some topics
23 or some discussions that you had with some of the
24 Government witnesses and just ask you some
25 particular questions that focus on statements they

1 made at trial that were perhaps inconsistent with
2 what I'm asking you. Okay? And the first witness I
3 want to talk about is David Calbert. Okay?

4 A. Okay.

5 Q. And Mr. Calbert is somebody that told --
6 that claimed that he received paperwork from Cheech
7 and ultimately passed that to Lupe Urquizo?

8 A. Yes.

9 Q. And this was the paperwork that he claimed
10 had something to do with Javier Molina being an
11 informant or providing information to law
12 enforcement?

13 A. Correct.

14 Q. Now, when you first interviewed Mr.
15 Calbert, was that on August 22nd of 2017?

16 A. I don't remember.

17 Q. All right. You don't have the 302 up
18 there, do you?

19 A. No, ma'am.

20 Q. Let me get the document.

21 MS. JACKS: Your Honor, I have a 302 dated
22 August 22, 2017, Bates stamped 41860, regarding an
23 interview with David Calbert. May I approach the
24 witness?

25 THE COURT: You may.

1 BY MS. JACKS:

2 Q. Agent Acee, is that the report of your
3 August 22, 2017, interview with David Calbert?

4 A. Yes, it is.

5 Q. And do you think if you reviewed it, that
6 might refresh your recollection as to whether that
7 was your first interview with Mr. Calbert?

8 A. Yes, ma'am.

9 Q. Just let me know when you're done and
10 ignore my writing on there.

11 A. Agent Neale wrote the report, but I think
12 this is -- I don't think this is the first
13 interview.

14 Q. You don't?

15 A. I think my 302 was the first one.

16 Q. Let me ask you this: Was the first time
17 that you spoke with Mr. Calbert the day that you
18 brought him down to the FBI office in Albuquerque
19 and allowed him to meet with Lupe Urquizo?

20 A. Yes, I think that was the first time.

21 Q. And if Lupe Urquizo and David Calbert were
22 both interviewed on August 22, 2017, would that have
23 been the first time that you met with David Calbert?

24 A. Yes.

25 Q. And when you talked to David Calbert after

1 that meeting with Lupe Urquizo, did you ask him some
2 questions about this paperwork he claimed that he
3 provided to Urquizo? Do you need to refresh your
4 memory with the report?

5 A. Yes, please.

6 Q. Go ahead.

7 A. Thank you. Yes, we did ask him questions
8 about that.

9 Q. And Mr. Calbert told you that this
10 paperwork he claimed to have gotten was one single
11 page, didn't he?

12 A. Yes.

13 Q. And you had a chance to talk with Mr.
14 Calbert again on September 28, 2017, when he came to
15 court to plead guilty, right?

16 A. Yes.

17 Q. And he didn't change his story about the
18 paperwork on that day, did he?

19 A. No.

20 Q. And you had another chance to talk to him
21 on January 12, 2018, in preparation for his
22 testimony here at trial, right?

23 A. That occurred. I just don't recall if I
24 was there.

25 Q. Do you think if you saw the 302 that you

1 prepared in connection with that interview that
2 might refresh your memory?

3 A. Yes.

4 Q. Actually, to be fair, there's two 302s
5 from that day, so I'll show you both. One is
6 authored by you, and one appears to be authored by
7 Ms. Stemo.

8 MS. JACKS: Your Honor, may I approach the
9 witness? I have two 302s, Bates stamped 51471 and
10 51474.

11 THE COURT: You may.

12 MR. CASTELLANO: I have no objection to
13 her asking questions about his report, but Agent
14 Stemo's report would be hearsay.

15 MS. JACKS: I don't intend to ask him
16 questions about Agent Stemo's report.

17 BY MS. JACKS:

18 A. Thank you.

19 Q. So does that refresh your memory, Agent
20 Acee?

21 A. Yes.

22 Q. And did you participate in a pretrial
23 interview with Mr. Calbert on January 12, 2018?

24 A. Yes.

25 Q. And Mr. Calbert didn't change his story

1 about the paperwork during the course of that
2 interview, did he?

3 A. No.

4 Q. Were you here at trial on February 5th of
5 2018, when Mr. Calbert testified?

6 A. Yes.

7 Q. And during his trial testimony, he
8 testified about this paperwork he claimed to have
9 seen, and he said for the first time it was two
10 pages, right?

11 A. I believe so.

12 Q. So that was inconsistent with all of his
13 prior statements to law enforcement?

14 A. Yes.

15 Q. Now, I want to ask you some questions on
16 the same topic, but about Lupe Urquizo.

17 A. Okay.

18 Q. And Lupe Urquizo -- you were here for his
19 trial testimony, right?

20 A. Yes.

21 Q. And Mr. Urquizo testified on February 6th
22 of 2018 that the paperwork that he claims to have
23 gotten from Mr. Calbert was one page?

24 A. I'd have to take your representation. I
25 don't recall.

1 Q. You don't recall what he said about that?

2 A. No.

3 Q. But previously Mr. Urquizo had told you
4 that the paperwork was in fact two pages, right?

5 A. I do recall that, yes.

6 Q. And that was what he told you during his
7 first interview on March 6, 2017?

8 A. Yes. That was not my first time talking
9 to him, but he did say that on that date.

10 Q. On March 6, 2017, he told you the
11 paperwork that he claims to have gotten was two
12 sheets of paper?

13 A. Yes.

14 Q. And he very specifically said it was a
15 police report?

16 A. I believe so.

17 Q. And then after that, Mr. Urquizo was
18 interviewed on August 22, 2017?

19 A. Yes.

20 Q. January 3, 2018?

21 A. Yes.

22 Q. January 22, 2018?

23 A. Yes.

24 Q. He came to court and you had some sort of
25 contact with him when he pled guilty on January 26,

1 2018?

2 A. I don't know if I was at his plea, but he
3 did come to court, yes.

4 Q. And then he had some sort of contact with
5 the STIU at the Penitentiary of New Mexico on
6 February 2nd of 2018 before he came down to testify;
7 is that right?

8 A. Yes.

9 Q. And during all those interviews, he never
10 changed his story that the paperwork was two pages,
11 did he?

12 A. I don't believe so.

13 Q. So the first time he said the paperwork
14 was one page was here in court on February 6th?

15 A. If he said that on February 6th, then yes.

16 Q. That's right. You don't remember what he
17 testified to in court, right?

18 A. Correct.

19 Q. So if I'm understanding the situation
20 correctly, David Calbert initially said the
21 paperwork was one page, but then changed it to two
22 pages during his testimony?

23 A. Yes.

24 Q. And Lupe Urquizo originally said the
25 paperwork was two pages, but changed it to one page

1 during his testimony?

2 A. If that's what he testified to, then yes.

3 Q. And what sort of contact did Mr. Calbert
4 have with Mr. Urquizo just prior to their testimony
5 in this trial?

6 A. I'm not sure.

7 Q. They were housed together, weren't they?

8 A. Yes.

9 Q. And have you asked either Mr. Calbert or
10 Mr. Urquizo how it was that they both changed their
11 testimony?

12 A. I haven't talked to either man since they
13 testified.

14 Q. Don't you think it's kind of odd that one
15 of them -- well, that Calbert changed his testimony
16 to match what Urquizo previously said, and that
17 Urquizo changed his testimony to match what Calbert
18 previously said?

19 A. No.

20 Q. With respect to Mr. Urquizo, he testified
21 here in court, I believe, and these are my notes,
22 that when you first met with him, that he felt that
23 he was facing the death penalty?

24 A. I'm sorry? Which man said that?

25 Q. Lupe Urquizo. So I guess that would have

1 been -- you met with him for the first time in
2 February of 2017?

3 A. I believe so.

4 Q. And during that first meeting, did you
5 threaten Mr. Urquizo with the death penalty?

6 A. No.

7 Q. Did you tell him that if he didn't become
8 a government witness, he was going to become a
9 defendant and face the federal death penalty?

10 A. Part of that is true, but I didn't mention
11 the death penalty.

12 Q. What part is true?

13 A. I have made statements to these guys, and
14 I think Urquizo was one of them, that: You're
15 either a cooperator or you face prosecution if you
16 stay with the S.

17 Q. So essentially, either you become a
18 witness or you're going to become a defendant?

19 A. Essentially.

20 Q. But if Mr. Urquizo said to anybody or
21 testified that you threatened him with the death
22 penalty, that's a lie?

23 A. Yes. I didn't do that.

24 Q. And Mr. Urquizo has also made statements
25 that in that first encounter with you, you

1 threatened to prosecute his brother.

2 A. No, I did not do that.

3 Q. So if Mr. Urquizo said that, that's also a
4 lie?

5 THE COURT: Well, that's for the jury to
6 determine.

7 Q. Did you threaten Lupe Urquizo's brother
8 with prosecution?

9 A. No.

10 Q. Okay. And Lupe Urquizo does have a
11 brother, right?

12 A. Yes. He has -- I think he has a couple
13 brothers.

14 Q. Did you threaten any of them with
15 prosecution?

16 A. No.

17 Q. All right. I want to move on to just a
18 few questions about Mario Rodriguez. First of all,
19 did Mario Rodriguez get convicted of raping a young
20 man at the Grant County jail?

21 A. I don't think he was convicted of rape.

22 Q. Well, he was convicted of some sort of
23 criminal sexual penetration, wasn't he?

24 A. Yes.

25 Q. And that involved a young man at the Grant

1 County jail?

2 A. Yes.

3 Q. And the offense -- does the offense that
4 Mr. Rodriguez -- was the offense that he was
5 convicted of an offense that would require him to
6 register as a sex offender if and when he's released
7 from prison?

8 A. I'm not completely familiar with New
9 Mexico State law, but I think it would.

10 Q. Okay. Did you talk to Mr. Rodriguez about
11 it?

12 A. That incident?

13 Q. Well, I'm more meaning about the
14 registration requirement.

15 A. I think I brought it up before.

16 Q. And Mr. Rodriguez, certainly in your
17 discussions, knew that he had to register as a sex
18 offender, right?

19 A. I'm not sure.

20 Q. Well, didn't he discuss it with you in the
21 sense that he was concerned and upset about that
22 registration requirement?

23 A. Yes.

24 Q. It was something he didn't want to have to
25 do, right?

1 A. I agree with you.

2 Q. And Mr. Rodriguez has claimed at different
3 points in time that the person that he assaulted in
4 the Grant County jail was a child molester?

5 A. Yes.

6 Q. He has said that, right?

7 A. I have heard that repeatedly, but I don't
8 recall if he specifically told me that.

9 Q. Okay.

10 A. That's rumor.

11 Q. But the fact is, that's not true? The
12 person he assaulted wasn't accused of child
13 molestation, was he?

14 A. Not based on that current incarceration,
15 no.

16 Q. He was in there for driving while
17 intoxicated?

18 A. Yes.

19 MS. JACKS: Can we have F as in Frank, C
20 as in Charlie? May I have the hard copy of the
21 exhibit, Ms. Standridge?

22 Q. It's my mistake, Agent Acee. Exhibit FC
23 was shown. All right. I have what's been marked as
24 Exhibit FC, and this is a letter that Mr. Rodriguez
25 wrote for somebody to give to Mr. Sanchez. Do you

1 recall that?

2 A. Yes.

3 Q. And this happened, and he brought this
4 letter to the meeting that you had with Mr.
5 Rodriguez and Ronald Sanchez in November of 2017,
6 correct?

7 A. Yes.

8 Q. And I just want to show you -- I just want
9 to direct you to the PS and ask you some questions.
10 Well, before I do that, let me just ask you a few
11 questions. In dealing with Mr. Rodriguez as a
12 government witness, did you tell Mr. Rodriguez that
13 if he became a government witness, that the
14 Government would be able to give him a new identity?

15 A. No, not in those terms.

16 Q. Well, did you say -- in what terms did you
17 tell him something like that?

18 A. When I initially met him, I discussed the
19 various options, one of which was, I talked about
20 wit sec before, or witness security, and that
21 there -- in my presentation of that, I talk about
22 relocation and a new identity. I certainly don't
23 promise that, and I make it clear that the FBI
24 doesn't run that program.

25 Q. But you did talk to Mr. Rodriguez about

1 the program and about the fact that if he got the
2 program, he could get a new identity?

3 A. That it was a possibility, yes.

4 Q. And did you also tell him that this new
5 identity would come with a clean criminal record?

6 A. No, because that's not true.

7 Q. So if he thought that, he didn't think it
8 because of something that you said?

9 A. I certainly hope not, because I wouldn't
10 have represented things that aren't true.

11 Q. Well, I want to just ask you a couple of
12 questions about Eric Duran. We've heard a lot about
13 Mr. Duran. And he's a government witness, right?

14 A. Yes.

15 Q. He is a government witness that actually
16 got out of jail early because of his cooperation
17 with the Government?

18 A. He got out of prison early because
19 Corrections gave him a lump sum, yes.

20 Q. And he got out of prison, and he got a job
21 working for the FBI up in Portland?

22 A. Yes.

23 Q. And he was doing that until, I guess, he
24 got arrested by Police Officer Snodgrass who
25 testified yesterday?

1 A. Correct.

2 Q. Now, Mr. Duran, as part of his
3 participation in this case as a government witness,
4 did he get a new identity?

5 A. No.

6 Q. Did he get a clean criminal history?

7 A. No.

8 Q. Do you know whether he bragged about
9 getting a new identity or a clean criminal history
10 to Mr. Rodriguez?

11 A. I don't know about that.

12 Q. Okay. I want to show you this letter, FC,
13 and I'm just going to direct your attention to the
14 last page, the PS.

15 A. Okay.

16 Q. Agent Acee, this is the letter that Mr.
17 Rodriguez wrote for you or for somebody to provide
18 to Mr. Sanchez, right?

19 A. Yes.

20 Q. And tell us what the PS on that letter
21 says.

22 A. "PS. A new identity record means you guys
23 can go hunting" -- I think there is a smiley face
24 there -- "again legally. Think of a real life and
25 all its perks and pleasures. Serio, happy birthday,

1 Dan."

2 Q. And when Mr. Rodriguez is referring to you
3 guys, he's talking about Daniel and Daniel's
4 brother, Ronald, right?

5 A. I think so.

6 Q. And he's telling them that if he became a
7 government witness, that both he and his brother
8 could get a new identity and a clean criminal
9 record?

10 A. Well, he says, "A new identity record
11 means you guys can go hunting again."

12 Q. Right. Because if someone is a felon,
13 they're not supposed to possess a firearm, right?

14 A. Right.

15 Q. So if they get a clean criminal record,
16 then they could again legally possess a firearm?

17 A. Correct.

18 Q. And that's what Mr. Rodriguez is saying to
19 Mr. Sanchez in the PS of that letter?

20 A. I think that's what he meant, yes.

21 Q. That becoming a government witness comes
22 with a new identity and a clean record?

23 A. Yes.

24 Q. I have, I think, just one question
25 regarding your interactions with Jerry Armenta. And

1 Mr. Armenta testified in this trial on February 12th
2 of 2018?

3 A. Yes.

4 Q. Were you present during that testimony?

5 A. I was.

6 Q. And did you hear Mr. Armenta -- he was
7 asked whether Timothy Martinez -- he told the story
8 about the passing of the paperwork, right, between
9 the pods, between yellow pod and blue pod?

10 A. I believe so.

11 Q. And in the trial, Mr. Armenta testified
12 that he never said Timothy Martinez was with Mario
13 Rodriguez when this paperwork was allegedly passed,
14 right?

15 A. I'm sorry. I just don't remember --

16 Q. That's okay.

17 A. -- all his testimony.

18 Q. Well, in the past when you interviewed Mr.
19 Armenta about that story, he told you that it was
20 Timothy Martinez and Mario Rodriguez that received
21 this paperwork that was supposedly passed under the
22 door, right?

23 A. I believe.

24 Q. And he told you that on September 17th of
25 2015, right?

1 A. Yes. I was going to say, it's been a long
2 time since I interviewed him.

3 Q. When you say you believe, do you want to
4 look at your 302 just to make sure, so that you're
5 accurate in this trial?

6 A. If you're going to ask me more questions
7 about it, yes.

8 Q. I'm just going to ask you that one
9 question, but I'm happy to show you the 302.

10 A. I do believe that's what he told me.

11 Q. Let's make sure.

12 MS. JACKS: Your Honor, I have a 302 dated
13 September 17, 2015, for an interview with Jerry
14 Armenta. It's Bates stamped 2249 and 2250. May I
15 approach the witness?

16 THE COURT: You may.

17 BY MS. JACKS:

18 Q. Agent Acee, I'll just ask you to refresh
19 your memory with that report and see if you can't
20 answer the question with more certainty?

21 A. Could you repeat the question?

22 Q. Yes. The question is whether he told you
23 during that interview that Timothy Martinez was with
24 Mario Rodriguez when this paperwork was supposedly
25 passed under the door between yellow pod and blue

1 pod?

2 A. Thank you.

3 Q. And can you answer the question?

4 A. Yes, he puts Timothy Martinez, Red, there
5 with other people at that time.

6 Q. Okay. So if he testified otherwise during
7 the trial, that's inconsistent with his trial
8 testimony, right?

9 A. It would be inconsistent, yes.

10 Q. Sorry. My files are a mess. Sorry. I
11 wanted to ask you some questions about Billy
12 Cordova. I'm just trying to locate that file. Let
13 me ask you the question and see if I actually have
14 to find the file.

15 Did you participate in an interview with
16 Billy Cordova on December 15, 2017?

17 A. Yes.

18 Q. And during that interview, did he tell you
19 for the first time that -- thank you, Richard --
20 that while living in yellow pod in March 2014, he
21 had a shank, and about a week before Urquizo and
22 Varela came to Southern New Mexico Correctional
23 Facility, that Daniel Sanchez asked Cordova for his
24 shank?

25 A. Yes, I remember that.

1 Q. So he told you in that interview that Mr.
2 Sanchez asked him for a shank?

3 A. Yes.

4 Q. But he said the timing of that was a week
5 before Urquizo got to Southern New Mexico
6 Correctional Facility?

7 A. I assume you're reading from my 302.

8 Q. Don't assume. I have it. I found it.
9 Mr. Jewkes found it.

10 MS. JACKS: So, Your Honor, I have a 302
11 dated December 15, 2017, Bates stamped 41728. It's
12 three pages. May I approach?

13 THE COURT: You may.

14 BY MS. JACKS:

15 Q. Agent Acee, if you review the 302 from
16 that interview, do you think that would refresh your
17 memory as to what Mr. Cordova specifically told you
18 on that date?

19 A. Yes. Thank you.

20 Q. So the question, I think, was about the
21 timing. So on December 15th of 2017, what did Mr.
22 Cordova tell you about the timing of Mr. Sanchez
23 supposedly asking him for a shank?

24 A. He said it was about a week before Urquizo
25 and Varela arrived.

1 Q. So if he testified in trial that that
2 happened on March 6th or 7th, 2014, that's
3 inconsistent with what he previously told you?

4 A. It's a little bit off, yes. He said about
5 a week.

6 Q. And he also said -- if it was the week
7 prior, it's before any sort of paperwork supposedly
8 came down regarding Javier Molina, right?

9 A. Yes.

10 Q. Now, Agent Acee, when you're trained as an
11 FBI agent, are you trained at all about the
12 circumstances or how it is that you should interview
13 witnesses?

14 A. Yes.

15 Q. I mean, let me ask you, when you interview
16 a witness, do you interview that witness alone and
17 outside the presence of other witnesses?

18 A. Generally not. Excuse me. You said with
19 other witnesses?

20 Q. Yeah. I mean, would you interview -- if
21 you're investigating a crime, and you have, say,
22 five or six witnesses, what's the preferred
23 procedure in interviewing those five or six
24 witnesses?

25 A. Interviewing them one at a time.

1 Q. And why is that?

2 A. So that we can get an independent
3 assessment of their recollection of the event.

4 Q. And there is a danger, isn't there,
5 when -- I mean, even if you interview honest
6 credible people, if you interview them in a group,
7 sometimes people adopt portions of other people's
8 statements, right?

9 A. That's a possibility, yes.

10 Q. Or later, think that they observed or
11 heard or saw something that another witness actually
12 said they heard or saw?

13 A. That could happen, as well.

14 Q. I mean, it's a natural occurrence even if
15 somebody is not actively trying to provide false
16 evidence?

17 A. I agree with you.

18 Q. Okay. And then there is also the risk
19 that if somebody was affirmatively trying to
20 provide -- if somebody was affirmatively trying to
21 create a story or provide false evidence, that
22 interviewing them in a group would just give them
23 more ammunition, right?

24 A. Yes.

25 Q. So the preferred procedure of every law

1 enforcement officer is to separate witnesses and
2 interview them independently, isn't it?

3 A. That's my preferred procedure, yes.

4 Q. Right. And in this case, where you're
5 investigating a homicide that occurred in a prison,
6 you have control over the conditions of when and how
7 you interview witnesses?

8 A. I usually do.

9 Q. I mean, it's not like you're responding to
10 an emergency where there might be 15 people that
11 need to be immediately interviewed or they might
12 disappear?

13 A. Are we talking about the Molina homicide?

14 Q. Correct.

15 A. Well, we're going back to me responding to
16 that incident, which I didn't do. I agree with you
17 that they're inmates and we could certainly control
18 how they were interviewed.

19 Q. And you've done that in this case?

20 A. I've interviewed inmates in this case,
21 yes.

22 Q. Right. And you control the circumstances
23 under which those interviews occur?

24 A. As much as I can.

25 Q. And on December 2nd of 2016, did you

1 conduct a group interview of four witnesses?

2 A. I'm not sure.

3 Q. Let me see if I can refresh your memory.

4 Do you recall interviewing Benjamin Clark, Jerry
5 Armenta, Robert Martinez, and Roy Paul Martinez
6 together in a group setting?

7 A. Vaguely.

8 Q. And the topic of that interview was the
9 Molina homicide, right?

10 A. I don't think so.

11 Q. You don't think so?

12 A. I'm not sure.

13 Q. If you saw a 302 that you prepared
14 regarding that group interview, do you think that
15 might refresh your memory --

16 A. Please.

17 Q. -- about who was there and about the topic
18 of the conversation?

19 A. It would.

20 MS. JACKS: Your Honor, I have a 302 dated
21 December 2nd of 2016, Bates stamped 2163. May I
22 approach the witness?

23 THE COURT: You may.

24 BY MS. JACKS:

25 A. Thank you.

1 Q. Agent Acee, after reviewing the report,
2 does that refresh your memory about what happened on
3 December 2nd of 2016?

4 A. Yes.

5 Q. And can you tell us, who did you interview
6 on that day?

7 A. Well, the numbers are blocked out. I see
8 that you've written the names in, and I think that
9 could be accurate.

10 Q. When the Government has produced discovery
11 to the defense in this matter, they block a lot of
12 stuff out, right?

13 A. Yes.

14 Q. That's called redactions?

15 A. Yes.

16 Q. And that document that I provided you,
17 that's a redacted document?

18 A. It is.

19 Q. So it shows that you interviewed people
20 together on December 2nd of 2016, right?

21 A. No.

22 Q. Oh, it doesn't show that?

23 A. No.

24 Q. Did you interview them separately?

25 A. Yes.

1 Q. And then you just prepared one 302 with
2 all four people's names and statements in there?

3 A. Correct.

4 Q. And what was the topic of the interviews?

5 A. One question: Who called the green light
6 on Javier Molina?

7 Excuse me. Two questions: Who called the
8 green light on Javier Molina? And when was it
9 called?

10 Q. All right. So it was regarding the Molina
11 homicide?

12 A. Yes.

13 Q. Now, is there anything in that report that
14 indicates that the witnesses were interviewed
15 separately?

16 A. No.

17 Q. And where did that interview or those
18 interviews take place on December 2, 2016?

19 A. L pod at PNM North facility.

20 Q. So in a prison setting in the pod?

21 A. Yes.

22 Q. And did you actually enter the pod and
23 speak with the witnesses while they were in their
24 cells?

25 A. I entered the pod, and then I ask which

1 ones I wanted to speak to, to come down, and I sat
2 at the table downstairs.

3 Q. So you sat at the table, and then you had
4 the witnesses come out one by one?

5 A. Yes.

6 Q. And you spoke to the witnesses at the
7 table in the housing pod?

8 A. Right.

9 Q. And do you know -- so in terms of being
10 separate, everybody was in the same room, but you
11 interviewed them one at a time?

12 A. Well, they're in the same pod. It's a
13 large pod. The other men were in their cells.

14 Q. Well, it's a pod of what? Twelve cells,
15 right?

16 A. Yes, but this was the cooperator pod, L
17 pod, and they weren't full at that time.

18 Q. I mean the pod, itself, was a total of 12
19 cells, the physical structure?

20 A. Yes, somewhere between 12 and 16 cells. I
21 can't remember what it is at the North. It seems a
22 little different?

23 Q. It's half on the top and half on the
24 bottom, right?

25 A. Yes.

1 Q. And prior to conducting the interviews in
2 the pod, did you do any sort of test to see whether
3 the conversation that you had at the table in the
4 pod could be heard by people in the cells?

5 A. I didn't do any testing, but I don't
6 believe it is. I certainly wasn't shouting.

7 Q. We heard some testimony regarding -- I
8 want to go back to some questions about Eric Duran,
9 because we heard some testimony about Mr. Duran's
10 employment with the FBI up in Portland.

11 A. Okay.

12 Q. Do you recall that?

13 A. Yes.

14 Q. And I think that we also heard a little
15 bit of testimony about the fact that he was engaged
16 in some sort of undercover operation?

17 A. Yes.

18 Q. And what he was doing was, he was being
19 asked to buy drugs, right?

20 A. Among the things he was being asked to do,
21 yes.

22 Q. Okay. Now, there were some questions
23 asked of Mr. Duran by one of the prosecutors about
24 this undercover operation, and you know a little bit
25 about it? I'm not going to go into the operation,

1 but you know a little bit about it, right?

2 A. Yes.

3 Q. And you saw the Facebook post that
4 Mr. Duran had made, I think Ms. Duncan questioned
5 him about?

6 A. Yes.

7 Q. Okay. Those don't have anything to do
8 with his undercover work as an FBI informant, do
9 they?

10 A. I disagree.

11 Q. Oh, you do?

12 A. Yes.

13 Q. So it's your position that the FBI had
14 Mr. Duran make those Facebook posts?

15 A. I spoke to the agents and supervisor after
16 that hearing to find out, because I wasn't part of
17 that investigation.

18 Q. Let me stop you right there. Mr. Acee,
19 have you provided any sort of discovery reports to
20 the defense about that part of your investigation?

21 A. No. That's not my investigation. I
22 just --

23 Q. I mean about those interviews that you
24 made with respect to Mr. Duran's Facebook posts?

25 A. I asked. I inquired. I didn't interview

1 any other agents.

2 Q. My question is this: Have you provided --
3 since Mr. Duran's testimony, have you provided any
4 information to the defendants about that aspect of
5 your investigation?

6 A. No.

7 Q. I want to ask you some questions about
8 this holiday party that was requested by several of
9 the government witnesses.

10 A. Okay.

11 Q. And you recall when you were first -- I
12 think you were first shown the letter. You were the
13 Government's first witness, right?

14 A. Yes.

15 Q. And during that testimony, I think you
16 were shown the letter that the government witnesses
17 had prepared and sent to the warden of the
18 Penitentiary of New Mexico?

19 A. I was.

20 Q. Right. And do you recall what your
21 response was about that when being shown that letter
22 about that party?

23 A. It was the first time I'd seen it.

24 Q. The first time you'd seen the letter?

25 A. Yes.

1 Q. Do you recall what your response was about
2 the party?

3 A. I was asked a lot of questions. No.

4 Q. Well, you acted like it was something you
5 didn't really want to participate in, right?

6 A. Oh, that's correct, yes.

7 Q. Was that true?

8 A. That I didn't want to participate in it?

9 Q. Yes.

10 A. Yes.

11 Q. Do you know an individual named Bob
12 Robinson from the New Mexico Department of
13 Corrections?

14 A. Yes.

15 Q. And did you talk to him about the letter
16 requesting the holiday party that was written by the
17 government witnesses?

18 A. I'm not sure.

19 MS. JACKS: Your Honor, I have an email
20 that Mr. Robinson prepared on Friday August 26,
21 2016, addressed to Warden Franco, Bates stamped
22 51433. May I approach the witness?

23 THE COURT: You may.

24 MS. JACKS: Yeah, I guess I'd better mark
25 it. I'm going to mark it defense next in order, and

1 that's going to be G as in giant, A as in apple.

2 BY MS. JACKS:

3 Q. And Agent Acee, I'm going to show you this
4 document to see if it refreshes your memory about
5 conversations you had with Mr. Robinson about that
6 party?

7 A. Thank you. Okay.

8 Q. Does that refresh your memory?

9 A. Not really.

10 Q. So you don't remember telling Mr. Robinson
11 that you thought the party was a good idea?

12 A. No.

13 Q. So is it your testimony that he's making
14 that up?

15 A. No.

16 Q. You might have told him that?

17 A. I think I might have agreed to go. I
18 don't believe I commented on whether or not it was a
19 good idea or not.

20 MS. JACKS: Your Honor, I'd move to admit
21 Exhibit GA.

22 THE COURT: Any objection, Mr. Castellano?

23 MR. CASTELLANO: Yes, Your Honor. It's
24 hearsay.

25 THE COURT: Well, I do think it probably

1 is being offered for the truth, so I will sustain
2 the objection.

3 BY MS. JACKS:

4 Q. Now, Agent Acee, you were asked a bunch of
5 questions, I think by both sides, about these
6 computer tablets that various people were given. I
7 just have a few sort of follow-up questions about
8 that. Okay? First of all, were some of the
9 computer tablets compromised?

10 A. Yes.

11 Q. And they were actually reset, right?

12 A. Yes.

13 Q. And once they were reset, the individuals
14 that possessed the tablets could access the internet
15 and do all sorts of things they weren't supposed to
16 be able to do with them?

17 A. Correct.

18 Q. And that was a violation of this Court's
19 order about possessing the tablets?

20 A. I'm sure it was.

21 Q. And that happened -- those tablets were
22 seized once those individuals violated the court
23 order, right?

24 A. Yes.

25 Q. And I think you said that that happened

1 sometime in April 2017?

2 A. That sounds right.

3 Q. And they were held -- they were seized by
4 the United States Marshal Service?

5 A. I think under their authority. They were
6 technically seized by whatever facilities the guys
7 were at.

8 Q. And then the facilities provided them to
9 the Marshal Service?

10 A. I think.

11 Q. All right. Well, I think you knew -- you
12 knew when the tablets were seized, right? Or
13 shortly thereafter?

14 A. Shortly thereafter, yes. We had some
15 hearings about it, and I was at those.

16 Q. So if the tablets were seized sometime in
17 April of 2017, you became aware they were seized in
18 April of 2017, right?

19 A. Yes.

20 Q. And the FBI has a forensic computer unit,
21 right?

22 A. Yes.

23 Q. And the FBI is certainly capable of doing
24 an analysis of those tablets and figuring out what
25 sort of nefarious things, purposes they were used

1 for, right?

2 A. Yes.

3 THE COURT: Ms. Jacks, would this be a
4 good time for us to take our morning break?

5 MS. JACKS: Sure, that's fine.

6 THE COURT: Let me remind the jury of a
7 few things. We're clicking along and making some
8 transitions here, so I want to remind you of a few
9 things that are especially important.

10 Until the trial is completed, you're not
11 to discuss this case with anyone, whether it's
12 members of your family or people involved in the
13 trial or anyone else, and that includes your fellow
14 jurors. If anyone approaches you, let me know about
15 it immediately. Also, you must not read or listen
16 to any news reports of the trial. Again, don't get
17 on the internet and do any research for purposes of
18 this case.

19 And finally, remember that you must not
20 talk about anything with any person who is involved
21 in the trial. If you need to speak with me, simply
22 give a note to one of the court security officers or
23 Ms. Standridge.

24 You may hear these a little bit more
25 frequently today than we have for a number of weeks,

1 but if I don't repeat them, do keep them in mind
2 each time we take a break.

3 All right. We'll be in recess for about
4 15 minutes.

5 All rise.

6 (The jury left the courtroom.)

7 THE COURT: All right. We'll be in recess
8 for about 15 minutes.

9 (The Court stood in recess.)

10 THE COURT: All right. Let's go on the
11 record.

12 Let me talk a little bit about some jury
13 instructions. I've been focusing on the defendants'
14 since theirs was filed first, their objections. Did
15 the Government get a chance to look at the
16 defendants' objections and have comments on those?
17 I guess one thing -- I have tried to be very
18 careful, and I'm going back through and I'm trying
19 to be doubly careful in making some changes so that
20 I don't treat the defendants as a unit. I don't
21 want to do that. But at the same time, sort of our
22 tradition in the Tenth Circuit is to use names when
23 we can so that it's not quite as impersonal as just
24 always referring to the gentleman as a "defendant."
25 So I've picked and choose, and I'm doing more and

1 more, going toward "defendant" to make sure that I
2 don't treat anybody as a unit.

3 What's the Government's position? If the
4 defendants want to be called "defendant" or
5 "defendants" throughout, do you want me to just
6 change it to do what they're wanting? Or do you
7 want me to kind of pick and choose, and we'll see
8 where we are at the end, to make sure I don't treat
9 the defendants as a unit?

10 What's your thoughts on that?

11 MR. CASTELLANO: Your Honor, I did look at
12 the instructions last night, and I filed our
13 response. And a few times I did comment on their
14 request. Other times, I didn't because, frankly, I
15 was just indifferent about whether they were there
16 or not. But I do agree that sometimes adding all
17 four names just kind of makes it wordy. So I think
18 it would actually streamline the instructions to use
19 the term "defendant" or "defendants" throughout.
20 I'm fine with that.

21 There are a couple of instructions
22 specifically where I asked that the word "or" be
23 inserted. That was on the aiding and abetting, and
24 I think conspiracy. Because that required either of
25 them -- any of them conspire with someone else, not

1 all four of them. So the way it read, it read all
2 four had to agree with someone else, or had to have
3 aided and abet someone else.

4 So under those circumstances, I asked for
5 an "or" so that any one of them could conspire with
6 another or aid and abet another.

7 THE COURT: Well, I guess my question is,
8 and maybe you answered it. I think they just want
9 to eliminate names and just go with "defendant" and
10 "defendants." Do you have any objection to that?

11 MR. CASTELLANO: I don't, Your Honor.

12 THE COURT: All right. So I'll just go
13 that way. It seems to me it's a little different
14 than what we're used to in the Tenth Circuit, and it
15 makes them a little more impersonal. But if that's
16 what everybody wants, I'll just go with it.

17 Did you have any other comments? Would
18 you be able to do this at some point, just take
19 their instruction, just say -- if you'd just write
20 beside it "no objection" or something just real
21 cryptic, it might help me sort of eliminate some
22 stuff. If y'all don't care about some of this
23 stuff, I don't care either. I just haven't had,
24 sometimes, the feedback from that red line copy that
25 they gave me on Monday morning. I believe it was

1 Monday morning.

2 MR. CASTELLANO: Right. What I would say
3 is, when I cared, I commented. And generally when I
4 didn't care, I did not comment.

5 THE COURT: So I can make their change
6 unless I see something very substantive about it?

7 MR. CASTELLANO: I think so. I'll try to
8 look it over, Your Honor.

9 THE COURT: All right. So if I hear you
10 don't care, I'm going to assume -- if I don't see
11 something in yours, you don't care. And unless I
12 see something substantive, I just may go along with
13 the defendant and try to get these things to a
14 conclusion.

15 MR. CASTELLANO: I think for the most
16 part, that's correct. I may catch something, but
17 generally I would say yes.

18 THE COURT: Okay.

19 MR. VILLA: Your Honor, there are a couple
20 of places where we specifically said we wanted to
21 use names, like number 43. But it's outlined in the
22 document we filed last night.

23 THE COURT: Okay.

24 All rise.

25 (The jury entered the courtroom.)

1 THE COURT: All right. Everyone be
2 seated.

3 All right, Mr. Acee, I'll remind you,
4 you're still under oath.

5 Ms. Jacks, if you wish to continue your
6 direct examination of Mr. Acee, you may do so.

7 BY MS. JACKS:

8 Q. I forgot to make a note of exactly where I
9 was. Were we talking about the tablets?

10 A. Yes.

11 Q. We were talking about the fact that the
12 FBI has the capability to look at that, to download
13 the tablets and determine what the various
14 government witnesses did with them?

15 A. Yes.

16 Q. But you never made a request for the
17 tablets to be submitted to the FBI; is that right?

18 A. I discussed it with the U.S. Attorney's
19 Office.

20 Q. And then it was decided that you would not
21 make a request for the Court to release the tablets
22 to you, to send to the FBI?

23 A. Are you asking if I made that decision?

24 Q. No. I'm just asking: The decision was
25 made, correct?

1 A. The decision was made.

2 Q. And the decision was a conscious one? It
3 wasn't like you forgot about the fact that the
4 marshals had the tablets?

5 A. No.

6 Q. You consciously decided: Let's not get
7 the tablets; we're not going to send them to the FBI
8 forensic lab?

9 A. I mean, that's what I wanted to do.

10 Q. But it was decided that you wouldn't do
11 it, right?

12 A. It was decided that I wouldn't write a
13 search warrant.

14 Q. The tablets remained in the marshals'
15 custody until the defendants were able to get a
16 court order to release them so that they could
17 provide them to Mr. Bryan, right?

18 A. I don't know who requested the court
19 order, but they were provided to Mr. Bryan.

20 Q. And at the time that they were released
21 and provided to Mr. Bryan, they had been seized for
22 at least nine months?

23 A. I believe so.

24 Q. And I just want to follow up on a few
25 questions that Ms. Bhalla asked you this morning

1 regarding the property that was seized by the FBI,
2 the Mario Rodriguez property.

3 A. Yes.

4 Q. That was seized by the FBI and remained in
5 the possession of, I guess, FBI Agent Sainato from
6 June 2017 until last Sunday?

7 A. Correct.

8 Q. And one of the things that she asked about
9 were the letters that were in Mario Rodriguez --
10 some of the letters that were in Mario Rodriguez's
11 property?

12 A. Yes.

13 Q. And specifically, she asked you about a
14 letter or letters that were written to Timothy
15 Martinez, another government witness?

16 A. Yes.

17 Q. And I think she -- first of all, those
18 letters that were written to Timothy Martinez were
19 found in the property of Mario Rodriguez?

20 A. Yes.

21 Q. And there was more than one?

22 A. I saw three this morning.

23 Q. And the letters specifically referenced
24 the fact that certain individuals' statements that
25 people had made, government witnesses had made,

1 didn't match up with the discovery in the case?

2 A. I saw one letter like that yesterday.

3 Q. And so do you have any understanding about
4 why Mario Rodriguez had letters that were written to
5 Timothy Martinez that contained information about
6 people matching statements to discovery in this
7 case?

8 A. You're asking if I know why?

9 Q. Yes.

10 A. I have some ideas, but I definitively
11 don't.

12 Q. And you didn't question Mr. Rodriguez
13 about it, right?

14 A. Since the discovery, no, I have not.

15 Q. Right. Because, I mean, you just became
16 aware of this on Sunday or Monday of this week,
17 right.

18 A. On Sunday evening.

19 Q. And those letters -- well, the defense
20 attorneys weren't permitted to question Mr.
21 Rodriguez about those Timothy Martinez letters
22 because we didn't have them when Mr. Rodriguez was
23 on the stand?

24 A. The second part of your answer is correct,
25 yes.

1 Q. And she also asked you some questions
2 about the letters that Mr. Rodriguez had in his
3 possession that were sent to courthouses to try to
4 get court documents or police reports on cases?

5 A. I saw a letter addressed to the clerk here
6 in Las Cruces.

7 Q. And in those letters, Mario Rodriguez
8 falsely represented that he was trying to get the
9 court materials because it affected his case? Like
10 his appeal, I think he said?

11 A. I have an idea what he was asking for, but
12 I can't say if he -- he may have had an appeal.
13 He's certainly been arrested a lot of times.

14 Q. But the documents he was requesting had
15 nothing do with any sort of legal proceeding against
16 him, did they?

17 A. I'm not sure. It listed a cause number.
18 I just don't remember if it said a person's name
19 related to that.

20 Q. Well, did you investigate what he was
21 trying to get?

22 A. No.

23 MS. JACKS: If I can have a moment, Your
24 Honor, I think I'm done.

25 THE COURT: You may.

1 MS. JACKS: I have nothing further, Your
2 Honor. Thank you.

3 THE COURT: Thank you, Ms. Jacks.

4 Mr. Castellano, do you have
5 cross-examination of Agent Acee?

6 MR. CASTELLANO: Yes, Your Honor. Thank
7 you.

8 THE COURT: Mr. Castellano.

9 BY MR. CASTELLANO:

10 Q. Agent Acee, let's start where counsel left
11 off here. The paperwork that was found in
12 Mr. Rodriguez's personal effects, you became aware
13 of that this weekend?

14 A. Yes, sir.

15 Q. Were they basically discovered in a box
16 that had another agent's SWAT gear in it?

17 A. Yes.

18 Q. And were you made aware that once he
19 initially perused them, looking for evidence of
20 court documents, things of that nature, that he put
21 it under there, and then it was forgotten about?

22 A. Yes.

23 Q. And is it approximately 960 documents? Is
24 that what you think?

25 A. It's a large stack.

1 MR. CASTELLANO: Your Honor, I move the
2 admission of all those documents at this time.

3 MS. FOX-YOUNG: Your Honor, may we
4 approach?

5 THE COURT: You may.

6 (The following proceedings were held at
7 the bench.)

8 MS. FOX-YOUNG: I'd like to voir dire the
9 witness in the presence of the jury. He doesn't
10 know what's in there or what the evidence is. We
11 honestly want for the Government to be able to admit
12 this is documents that were just produced to us
13 after they've been in the possession of the FBI
14 since last summer, and held back, and therefore
15 prejudicing the defense.

16 And the Court shouldn't allow it on the
17 Government's motion. And I don't think this is the
18 right witness to do it with. We have not had an
19 opportunity to review all 1,000 pages.

20 THE COURT: All right. That was going to
21 be my question. Have the defendants collectively
22 been able to divide it up and go through it and see
23 what's in there?

24 MS. BHALLA: Your Honor, I did try to go
25 through and look through, and my paralegal and I

1 split it up. The reality is, you take a page like
2 this, it is tiny writing. It's hard to read. Some
3 of the copies aren't legible, due to poor photo
4 quality.

5 It has -- there is personal information
6 belonging to other people in the documents like we
7 talked about with the address book, and it's got
8 Social Security numbers in it. We've got what we
9 believe to be family members' names, addresses, and
10 dates of birth. That's one of the reasons we
11 haven't moved it in evidence, because we haven't
12 been able to continue the review to see what other
13 kind of information is in there. It would take us a
14 week to go through all that stuff because it is
15 thousands and thousands of pages, handwritten notes
16 from Mr. Mario Rodriguez, that are tiny and long,
17 and it's a Herculean task, which is why the proposal
18 for us to re-call Mario and question him on this is
19 impossible for the defense to do. It's just
20 impossible.

21 THE COURT: All right. Mr. Lowry.

22 MR. LOWRY: Your Honor, you just sustained
23 the objection from the Government on the email
24 because it's hearsay. And frankly, all this
25 material is hearsay.

1 THE COURT: Have you looked at it enough
2 to see if there is hearsay in this material?

3 MR. LOWRY: Well, it's statements about
4 him. It's his diaries. It's everything that's been
5 described. I haven't looked at it enough, Your
6 Honor. We divided it up, a certain portion that
7 looked more applicable, a diary portion. But there
8 is pornography in there. There is all kinds of
9 stuff in there that has no business going to the
10 jury.

11 To put it in wholesale is just -- it's not
12 called for.

13 THE COURT: Mr. Jewkes, do you have
14 thoughts on this?

15 MR. JEWKES: After what everyone else has
16 said, I haven't looked at four or five documents.

17 THE COURT: What did you see?

18 MR. JEWKES: Hearsay. And I have a
19 question about materiality, relevance as to some of
20 these documents. But without going through them, we
21 would object.

22 MR. CASTELLANO: The Court can offer a
23 limiting instruction, but the defense counsel made
24 it an issue, asked questions: Do you know how many
25 times he's talked about violence? Do you know how

1 many times? Leaving the impression that they had
2 gone through the documents and they knew how many
3 times it was.

4 So clearly, they wanted to use it to
5 create an impression that Mr. Rodriguez had lots of
6 things in there, and this is not for the jury to
7 decide. And these are regarding his statements
8 according to what the defense represented to the
9 witness on the stand, and so those documents are now
10 squarely at play here.

11 And, I mean, they use the line of
12 questioning prejudicial information against Mr.
13 Rodriguez in those documents, and I'm welcome to let
14 the jury have that information.

15 THE COURT: Hold on. Let me see if I can
16 say something here and see if everybody can -- it
17 seems to me that whatever prejudice the Government
18 has endured from that questioning was fairly
19 minimal. It seems to me that doing a document dump
20 on the jury right here toward the end of the case
21 can be problems for everybody, the Court,
22 Government, all the defendants, and their lawyers.

23 I would suspect, without having seen much,
24 that there is going to be hearsay statements. I do
25 think that it is very likely to be some 403

1 problems, and I think there may be some 401
2 problems. So I think we're going to run into
3 problems if we just have a document dump. So I
4 think we'd be better off denying it.

5 I think that without the Court having an
6 opportunity, and the defendants particularly
7 engaging in an adversarial process that helps the
8 Court make informed decisions about the documents, I
9 don't think that this is the way to proceed.

10 So I'm going to sustain the objections and
11 not allow the documents to come into evidence.

12 MR. BECK: Your Honor, I'm just providing
13 a copy of the agent's notes, asked for this morning
14 to each defense counsel.

15 MS. FOX-YOUNG: For the record, is the
16 Government representing that this constitutes the
17 remainder of the agent's notes that are relevant to
18 the cooperating witnesses that testified in this
19 case?

20 MR. BECK: Yes.

21 THE COURT: All right, everybody. Live
22 with that.

23 MS. FOX-YOUNG: Thank you, Your Honor.

24 (The following proceedings were held in
25 open court.)

1 THE COURT: All right. Mr. Castellano.

2 MR. CASTELLANO: Your Honor, I understand
3 the Court's ruling. I'll just note my objection for
4 the record.

5 THE COURT: I understand.

6 BY MR. CASTELLANO:

7 Q. Okay. Now, Agent Acee, you were asked
8 whether or not the defense counsel was permitted to
9 question Mr. Rodriguez about these documents. Do
10 you remember that?

11 A. Yes.

12 Q. And isn't it true that the Government
13 agreed to make Mr. Rodriguez available as a witness
14 once again so that defense could question him about
15 those documents?

16 A. Yes.

17 Q. And the United States offered to bring
18 Mr. Rodriguez to court today so they could ask him
19 questions if they wanted to?

20 A. Correct.

21 Q. And did they refuse that offer?

22 A. Yes.

23 MS. FOX-YOUNG: Your Honor, may we
24 approach?

25 THE COURT: You may.

1 (The following proceedings were held at the
2 bench.)

3 MS. FOX-YOUNG: Your Honor, I have a
4 couple of objections. First of all, I think there
5 is a foundational problem with Agent Acee is not the
6 person to make any representations as to whether or
7 not a witness could be provided. But I think we're
8 also getting into burden shifting here.

9 THE COURT: The Court knows, and the jury
10 needs to know and is about to be instructed that the
11 defense has no burden to put on any witness or any
12 evidence in this case in this line of questioning.
13 I'll remind them at this point of that.

14 Let's move along. I think you made the
15 point. I do think he was a witness, he saw it all
16 yesterday, so it's not like he didn't have personal
17 knowledge. But I will remind the jury. And I'll
18 tell them in our final instructions; I'll give a
19 fuller instruction about that.

20 (The following proceedings were held in
21 open court.)

22 THE COURT: All right. Let me remind the
23 jury, and I'll give you full instructions on this
24 when I give my final instructions, but I told you at
25 the beginning of the trial and I'm telling you now

1 and I'll tell you at the end of the trial, the
2 defendants don't have any burden to put on any
3 evidence at all. So keep that in mind. They have a
4 presumption of innocence. They don't have to
5 testify, they don't have to put on any witnesses or
6 anything like that. So they don't have a burden
7 here of producing any witnesses, and I'll talk to
8 you more fully about that when we get to the final
9 instructions. All right.

10 Mr. Castellano.

11 BY MR. CASTELLANO:

12 Q. Agent Acee, you were asked about a letter
13 in Blue's paperwork regarding Timothy Martinez. Do
14 you remember that?

15 A. Yes.

16 Q. And do you recall that the letter was
17 dated October of 2015?

18 A. Yes.

19 Q. And that was the time when the state case
20 was still pending, correct?

21 A. Correct.

22 Q. And so to say government witnesses, those
23 would have actually been state witnesses and not
24 witnesses for this case?

25 A. Correct.

1 Q. And you're aware of this scheme they tried
2 at the state level, correct?

3 A. Yes.

4 Q. About Mr. Armenta trying to take the rap
5 for everybody?

6 A. Yes.

7 Q. And it was at this timeframe that that
8 letter was written?

9 A. Yes.

10 Q. Now, turning to the tablets, were you able
11 to seize those tablets, or was there a court order
12 in place protecting those tablets?

13 A. There was a court order in place that did
14 not allow me or other law enforcement to take the
15 tablets.

16 Q. And is it your understanding that if there
17 was -- at the facility, if there is an issue of
18 tampering or suspected tampering, all that could be
19 done was the tablet would be seized and inspected
20 briefly to see if it had been tampered with?

21 A. By corrections staff, yes.

22 Q. And did that order allow you to seize the
23 tablets otherwise?

24 A. It did not allow me or other law
25 enforcement to seize the tablets.

1 Q. And are you aware that Ms. Jacks was one
2 of the persons that helped put that protective order
3 together with the United States?

4 A. Yes.

5 Q. And when you talked about not being able
6 to obtain a search warrant even though the tablets
7 had been tampered with, were you aware if they were
8 used in any crime?

9 A. They were not. I couldn't find one. I
10 researched it. I talked with attorneys at your
11 office and we couldn't find a crime where I could
12 request it from a judge.

13 Q. So you knew it was tampered with, but you
14 don't know if it was involved in any crime
15 whatsoever?

16 A. Correct.

17 Q. Without evidence of a crime, would you be
18 able to obtain a search warrant?

19 A. No.

20 Q. Now, you're aware that actually for months
21 there was discussion in court at hearings about the
22 best way to get these tablets to somebody for
23 inspection?

24 A. Yes.

25 Q. And those tablets, there is also concern

1 because there might be attorney-client information
2 on those tablets for those --

3 MS. JACKS: Objection to the leading
4 nature of this questioning.

5 THE COURT: Let's not lead.

6 MS. JACKS: And also, Your Honor, the
7 tablets were a one-way street. They only had
8 discovery.

9 THE COURT: Well, I'll let you work with
10 that on redirect. Let's not lead, Mr. Castellano.

11 MR. CASTELLANO: Okay. I would just ask
12 for a little leeway since this is cross-examination.

13 THE COURT: I understand it's cross, but I
14 think Mr. Acee has pretty much identified with your
15 table.

16 MR. CASTELLANO: Understood, Your Honor.

17 BY MR. CASTELLANO:

18 Q. Agent Acee, do you remember there being
19 talk of people being able to put attorney-client
20 information on those tablets?

21 A. Yes.

22 Q. And so was that also a concern?

23 A. Yes.

24 Q. Are you able, without a court order, to
25 look at something that is privileged?

1 A. I'm not able to, and I should not.

2 Q. So, for example, would you be able to,
3 without suspicion, be able to look at defendants'
4 tablets? Because there might be protected material
5 on there?

6 A. It's protected. I don't want anything to
7 do with the tablets without a court order.

8 Q. You were asked about Eric Duran and the
9 investigation he was involved in once he left New
10 Mexico. Do you remember that?

11 A. Yes.

12 Q. Did that involve drugs and money
13 laundering?

14 A. Yes.

15 Q. Related to Mr. Duran's Facebook post, did
16 you learn that --

17 MS. JACKS: Objection, hearsay. This
18 information has also been withheld from the
19 defendants to this moment.

20 THE COURT: Well, let's do this. I didn't
21 quite get the question, so ask the question. Try
22 not to put in the question any sort of out-of-court
23 statement. And, Mr. Acee, if you'll give me a
24 second to hear the question before you answer it.

25 MS. JACKS: Well, Your Honor, if the

1 Government is going to elicit testimony about an
2 investigation, the defense requests discovery of
3 that investigation.

4 MR. CASTELLANO: I'm not seeking --

5 MS. JACKS: We're at a disadvantage
6 because that hasn't been provided to us.

7 MR. CASTELLANO: I'm not seeking that
8 information, Your Honor. I'm talking about the
9 Facebook post which she asked about.

10 THE COURT: All right.

11 MS. JACKS: Right. But my understanding
12 was that Agent Acee conducted an investigation into
13 those Facebook posts, and that has not been provided
14 to the defendants.

15 THE COURT: Let's hear the question, and
16 then we'll see if you still have an objection to
17 this one question.

18 BY MR. CASTELLANO:

19 Q. I'll pose this as a yes or no, Agent Acee,
20 so we don't have to worry about that. Were you made
21 aware of whether or not Eric Duran's Facebook post
22 was authorized by law enforcement?

23 MS. JACKS: Objection, hearsay and lack of
24 discovery.

25 THE COURT: Sustained.

1 BY MR. CASTELLANO:

2 Q. And I don't need to know the answer, but
3 did you do a follow-up -- well, don't tell me what
4 anyone said. Did you follow up on the issue with
5 the people in that state?

6 A. Yes.

7 Q. Once again, without telling us what was
8 said, did you get an answer responsive to your
9 question about the Facebook page?

10 A. Yes.

11 Q. You were asked about a report which was
12 Bates stamped 20163. Do you remember that?

13 A. Which report is it?

14 Q. I'll show it to you in a second, but
15 referring to these numbers, including another
16 report, March 6, 2017, regarding Lupe Urquizo, do
17 you remember being asked about that?

18 A. Yes.

19 Q. And do you recall the Bates stamp number
20 was 43,638?

21 A. No, but I believe you.

22 Q. Does that number indicate how many
23 documents have been disclosed in this case?

24 A. Yes.

25 Q. So at least as far as this is concerned,

1 over 40,000 documents?

2 A. Correct.

3 Q. Are you familiar with all those documents
4 without reviewing them?

5 A. No.

6 Q. The document here with the number 20,163
7 is the report you were asked about regarding a
8 December 2, 2016, interview with four inmates. Do
9 you recall that?

10 A. Yes.

11 Q. And do you recall asking people who called
12 the green light on Javier Molina and when was it
13 called?

14 A. I do.

15 Q. And did those people each answer your
16 questions separately and alone with you?

17 A. Yes.

18 Q. And did those people each give you
19 information about who called that hit?

20 A. Yes.

21 Q. And approximately how long before Javier
22 Molina was hit?

23 A. Yes.

24 Q. And were those people, if you remember,
25 Benjamin Clark?

1 A. Yes.

2 Q. Roy Martinez?

3 A. Yes.

4 Q. Robert Martinez?

5 A. Yes.

6 Q. And I'm forgetting the fourth one, but
7 were they witnesses in this case?

8 A. They are. And if you need me to recall
9 the fourth one, I think I can.

10 Q. And independently, did they each tell you
11 who called the hit on Javier Molina?

12 A. Yes.

13 Q. And who was that person?

14 MS. JACKS: Objection, hearsay.

15 THE COURT: Sounds like it's being offered
16 for the truth. Sustained.

17 Q. I don't need to know the name, but
18 independently did they provide a name of who called
19 the hit?

20 MS. JACKS: Objection. It also calls for
21 hearsay.

22 THE COURT: Sustained.

23 BY MR. CASTELLANO:

24 Q. I didn't ask for a name, Agent Acee, but
25 I'll move on. Regardless, did you talk to these

1 four people independently?

2 A. Yes.

3 Q. Not as a group?

4 A. Not as a group. Independently.

5 Q. I'm going to go back a little bit now.

6 You first started your examination at the beginning
7 of the week. Do you remember that?

8 A. On Monday, yes.

9 Q. It seems like a long time ago now. Okay.
10 You were cross-examined by Mr. Baca's attorney about
11 Mr. Baca being eager to kill Mr. Marcantel. Do you
12 remember that?

13 A. Yes.

14 Q. And do you recall from the investigation
15 that initially Mr. Baca, on the recordings, wanted
16 to kill Mr. Santistevan and Adam Vigil?

17 A. Yes.

18 Q. And then over the course of the
19 investigation, do you recall that he also focused on
20 Mr. Marcantel?

21 A. Yes.

22 Q. And you were asked about what Christopher
23 Garcia knew at the time that he turned over the
24 firearm to Mario Montoya on November 29th of 2015?

25 A. Yes.

1 Q. So would that recording give us a pretty
2 good idea of what that conversation was about?

3 A. Yes.

4 MR. CASTELLANO: Your Honor, at this time
5 I'm going to play one or two clips from Government's
6 Exhibit 396 related to that issue.

7 THE COURT: All right.

8 (Tape played.)

9 Q. So this part of investigation, do you
10 recall that Mr. Garcia is discussing Mr. Marcantel?

11 A. Yes.

12 Q. And I think I have a second clip from that
13 exhibit, which is Exhibit 396.

14 (Tape played.)

15 Q. Hearing that conversation, is it your
16 understanding that Christopher Garcia was providing
17 a suggestion or advice to Mario Montoya on how he
18 could plant evidence, making it look like someone
19 else was at the crime scene?

20 A. Yes.

21 MS. JACKS: Your Honor, can we request a
22 limiting instruction regarding this?

23 THE COURT: Yes. These are conversations;
24 again, you've heard them earlier with Mr. Baca. So
25 you can only use these conversation and then this

1 testimony that Mr. Acee is giving about these
2 recordings, in your deliberations against Mr. Baca.
3 They can't be used by the jury in its deliberations
4 as to any other defendant.

5 MR. LOWRY: Well, Your Honor, they're not
6 conversations with Mr. Baca, either. We'd ask a
7 limiting instruction be applied here, as well.

8 THE COURT: Well, but it's evidence
9 against Mr. Baca, unless I'm confused here.

10 MR. CASTELLANO: It is, Your Honor.

11 THE COURT: All right. So overruled as to
12 that.

13 BY MR. CASTELLANO:

14 Q. Now, you were also asked about your Grand
15 Jury testimony related to these conspiracies to
16 murder Mr. Marcantel and Mr. Santistevan. Do you
17 remember that?

18 A. Yes.

19 Q. And during the Grand Jury, did you lay
20 this out for them?

21 A. Yes.

22 Q. And when Adam Vigil was mentioned, do you
23 recall why Adam Vigil was particularly important at
24 that time when the recordings were taken?

25 A. Yes.

1 Q. Why was he important?

2 A. Mr. Vigil is an STIU administrator, and he
3 had been identified as an expert witness in the
4 state homicide case against Javier Molina.

5 Q. So at that point he was not only an STIU
6 investigator, but he was a witness?

7 A. He was going to be a witness and a gang
8 expert.

9 Q. And that's the Javier Molina murder at the
10 state level?

11 A. Yes, sir.

12 Q. Now, you were asked the question also, a
13 phrase you've used before, something you tell
14 cooperators: If it's not recorded, it didn't
15 happen.

16 Do you remember that?

17 A. Yes.

18 Q. And remind us again why you tell
19 cooperators that.

20 A. I'm emphasizing that I want recordings;
21 that I'm placing them with a recording device and
22 they're to use it.

23 Q. Is it your position that if it was
24 recorded, it did happen?

25 A. No.

1 Q. So just because something is a recording,
2 does it still need to have context and meaning in
3 light of other evidence that you know?

4 A. Exactly. Yes.

5 Q. And once again, is it actually a true
6 statement to say if it wasn't recorded, it didn't
7 happen?

8 A. No.

9 Q. Do you recall when Mr. Baca returned to
10 New Mexico?

11 A. Yes.

12 Q. Go ahead and give me a month and year, for
13 starters.

14 A. October 2015.

15 Q. And if you recall, is it your recollection
16 that within a week he was seeking the murder of Mr.
17 Santistevan and Mr. Vigil, for starters?

18 A. Yes.

19 MR. CASTELLANO: Your Honor, at this time
20 I'd like to move the admission -- or actually replay
21 portions of Government's Exhibit 356.

22 THE COURT: All right.

23 MS. JACKS: Again, we'd ask for a limiting
24 instruction, Your Honor.

25 THE COURT: All right. Remind me what 356

1 entails.

2 MR. CASTELLANO: 356 is a recording. I
3 think it includes Mr. Duran and Mr. Baca and Mr.
4 Montoya, if I'm not mistaken.

5 THE COURT: All right. So, again, the
6 limiting instruction is that you can only use this
7 in your consideration of the charges against Mr.
8 Baca. You cannot use it in your consideration or
9 deliberations as to the charges against any of the
10 other gentlemen. All right.

11 Mr. Castellano.

12 MR. CASTELLANO: Thank you, Your Honor.

13 MR. LOWRY: Your Honor, can we lay a
14 little bit of foundation on this, when this
15 recording was made?

16 THE COURT: Do you wish to do that, or do
17 you want to leave that for redirect?

18 MR. CASTELLANO: Actually, Your Honor, the
19 recording itself will state when it was made, in the
20 second clip.

21 THE COURT: All right. I'll let you go
22 into further on it, Mr. Lowry, but let me let Mr.
23 Castellano put it on how he wishes.

24 (Tape played.)

25 BY MR. CASTELLANO:

1 Q. There are some unintelligibles here. Did
2 you hear him say that Santistevan and Adam Vigil are
3 making desmadre?

4 A. Yes.

5 Q. Okay. Thank you. Let's continue, please.
6 (Tape played.)

7 Q. Now that the recording has concluded, do
8 you recall that this is a conversation including Mr.
9 Baca, Mr. Duran, and Mario Montoya?

10 A. Yes.

11 Q. Let me play the next clip.
12 (Tape played.)

13 Q. Okay. For the record, the transcript is
14 also on the screen, and I'm circling -- actually,
15 I'm underlining the words, "But they just brought
16 Pup back last week"?

17 A. Yes.

18 Q. So does that give you an indication that
19 this happened within a week of Mr. Baca arriving
20 back in New Mexico?

21 MR. LOWRY: Objection, Your Honor. It
22 misstates the facts. This witness has testified
23 that these telephone recordings didn't initiate
24 until November 4, 2015, and it's much longer than a
25 week after Mr. Baca returned.

1 THE COURT: Well, let Mr. Acee testify
2 what his understanding is, and then you can go into
3 it on redirect. Overruled.

4 BY MR. CASTELLANO:

5 Q. Is that what it says, at least?

6 A. Yes.

7 Q. You were asked whether Eric Duran was a
8 skilled manipulator or has the gift of gab. Do you
9 remember that?

10 A. Yes.

11 Q. And how is he a skilled manipulator, if he
12 is?

13 A. I observed him have several girlfriends,
14 get them to put money on his books. Over time, I
15 believe he's convinced some of them to bring drugs
16 into the facility. And he's able to -- over time,
17 I've observed through my investigation where he's
18 been able to get prison staff to do stuff for him,
19 too, that they shouldn't be doing.

20 Q. When it came to Roy Martinez and Robert
21 Martinez, do you recall whether or not he was able
22 to ask them to put their ideas to paper in terms of
23 the murder conspiracy?

24 A. Yes, he was.

25 Q. And did they do that against their own

1 will, as far as you know from the evidence?

2 A. No.

3 MR. LOWRY: Objection, Your Honor. It
4 calls for speculation and conclusion he's not in a
5 position to make.

6 THE COURT: Sustained.

7 BY MR. CASTELLANO:

8 Q. Were you here for Roy Martinez' and Robert
9 Martinez' testimony?

10 A. I was here for Robert's.

11 Q. And did he give any indication that he was
12 tricked into doing that?

13 A. No.

14 Q. Or that it was something he didn't want to
15 do?

16 A. No.

17 Q. And when it came to Jerry Armenta, what
18 was your understanding of what happened with Mr.
19 Armenta and Mr. Duran?

20 A. Mr. Duran encouraged Armenta to cooperate,
21 initially with the state authorities, if I remember
22 correctly.

23 Q. You were asked about a November 3, 2015,
24 text message between yourself and Eric Duran,
25 indicating -- the question to you was whether or not

1 you should let Pup know about the phone that
2 Mr. Duran had. Do you remember that?

3 A. Yes.

4 Q. So under those circumstances, was
5 Mr. Duran seeking advice from you about the
6 investigation?

7 A. Yes.

8 Q. And consequently, then, was Mr. Baca let
9 known -- did he find out about the phone?

10 A. Yes.

11 Q. And is that how he got some of the
12 recordings?

13 A. Yes.

14 Q. You were asked about a report regarding
15 Roy Martinez and Mr. Duran approaching him about the
16 hit on -- I think on Mr. Marcantel and
17 Mr. Santistevan. Do you remember that?

18 A. Yes. I think I was shown another agent's
19 notes.

20 Q. And do you remember whether or not --
21 well, from your understanding of the notes, did
22 Mr. Duran make Mr. Martinez do that, or did he
23 approach him and remind him of the prior
24 conversations they had about those murder
25 conspiracies?

1 MR. LOWRY: Objection, calls for
2 speculation. He doesn't know what was in that
3 witness' mind.

4 THE COURT: Well, right at the moment,
5 it's just a yes or no question. Let me hear his
6 answer to this, and then I'll take the next
7 question.

8 A. Yes.

9 THE COURT: Why don't you ask your next
10 question and let me see if I'm going to allow it, if
11 you have a follow-up.

12 BY MR. CASTELLANO:

13 Q. Was it your understanding that what
14 Mr. Duran did was remind Mr. Martinez, Roy Martinez,
15 about prior conversations they had about these
16 murder conspiracies?

17 THE COURT: Do you have an objection?

18 MR. LOWRY: Objection. This is hearsay.
19 And, Your Honor, the evidence will show that the
20 prior conversations didn't -- may we approach?

21 THE COURT: Well, I'm going to sustain the
22 objection.

23 BY MR. CASTELLANO:

24 Q. Regarding those notes, you were asked
25 about your notes, correct?

1 A. I was asked about my notes and other
2 agents' notes.

3 Q. So notes including a discussion with Roy
4 Paul Martinez on December 17th of 2015?

5 A. Yes.

6 Q. Was that just a couple of weeks after the
7 roundup in this case?

8 A. Yes.

9 Q. And was Mr. Martinez cooperating already
10 at that point?

11 A. Yes.

12 Q. You were sitting down and taking notes
13 from him?

14 A. Correct.

15 Q. And in addition to what he told you about,
16 you were asked a question about your notes. Oh, the
17 question, I think, was regarding the Marcantel hit,
18 whether Crazo, or Eric Duran, approached Shadow,
19 saying that Santistevan needed to be hit. That was
20 the question?

21 A. Yes.

22 Q. And that's what my question referred to,
23 was when it says Crazo approached Shadow, was it
24 that he approached him with the idea or to remind
25 him of prior conversations?

1 A. It was a reminder.

2 Q. In addition to that, did you learn from
3 Shadow, or Roy Paul Martinez, that he had actually
4 tasked somebody else with the murder of agent --
5 Secretary Marcantel, that person being someone
6 called Smurf?

7 MR. LOWRY: Objection, beyond the scope of
8 direct.

9 THE COURT: Overruled.

10 BY MR. CASTELLANO:

11 A. Yes.

12 Q. So was that a further indication to you
13 that Roy Paul Martinez, by his own admission, had
14 tasked somebody else with killing Marcantel?

15 A. Yes.

16 MR. LOWRY: Your Honor, I think the
17 response called for hearsay. We move to strike.

18 THE COURT: Well, what do you want? What
19 is it that you want?

20 MR. LOWRY: I would actually like a chance
21 to object. But he's soliciting out-of-court
22 statements by somebody who is not present and hasn't
23 testified to that effect. And I'd like the answer
24 to be stricken.

25 THE COURT: I think we are getting into

1 just him commenting on evidence that is being,
2 through the government's witnesses, offered for the
3 truth. So I'll sustain and strike the answer.

4 MR. CASTELLANO: Your Honor, as I move
5 through these, I'll let the Court know ahead of time
6 for questions like that. He was asked about his
7 notes, so I am seeking to impeach his testimony on
8 cross-examination.

9 BY MR. CASTELLANO:

10 Q. You were asked about your notes regarding
11 Lupe Urquizo and holding up something to the window.
12 Do you remember that?

13 A. Yes.

14 Q. And on direct examination, you said you
15 may have gotten that wrong?

16 A. Yes. I think I indicated where I saw the
17 point of contention.

18 Q. What do you think that was, from
19 remembering, looking at your report and the
20 circumstances?

21 A. It's the last sentence, I think page 2,
22 and it has to do with Urquizo's describing the
23 sequence of communications with Mario Rodriguez.
24 And in that 302, in that sentence it says -- I'd
25 have to look at it to know exactly what it said, but

1 it's a discussion about how the note or how the
2 communication went between those two men.

3 Q. So the report didn't say which door
4 Urquizo put the note -- held the note up to?

5 A. No.

6 Q. Regarding Mr. Urquizo, I'll see if we can
7 pull up Defendants' V4. It should be Mr. Baca's
8 location history. And do you recall from Mr.
9 Urquizo's testimony about him having a discussion
10 with Mr. Baca in the summer of 2012? If you don't
11 remember, I can also refresh your recollection.

12 A. Yes, sir.

13 MR. CASTELLANO: May I approach the
14 witness, Your Honor?

15 THE COURT: You may.

16 Q. Just to refresh your recollection --
17 before I show this to you, this has to do with Mr.
18 Baca's location history in the summer of 2012.

19 A. Okay. Do I need to read it all?

20 Q. And you recall, as we pull up that exhibit
21 again, Mr. Urquizo's testimony about Mr. Baca being
22 housed in the Q pod in the summer of 2012?

23 A. Yes.

24 Q. I'll circle a portion here, make it
25 smaller. Okay. So do you see Mr. Baca's location

1 history as far as June 29, 2012, he was in Q pod?

2 A. I see that.

3 Q. And do you recall him being asked
4 questions with a diagram of the facility and where
5 the cages were?

6 A. The overview, yes. Like an aerial view,
7 yes.

8 Q. Do you recall him indicating where the
9 cages were and where Mr. Baca's cell was?

10 A. Yes.

11 Q. When you initially asked him that
12 question, do you know if he'd seen his location
13 history?

14 A. If Urquizo had seen it?

15 Q. Yes.

16 A. No.

17 Q. And do you recall the testimony about --
18 you were asked about David Calbert's indication that
19 he'd received the paperwork through the cages?

20 A. Yes.

21 Q. And there was an indication that according
22 to him, he and a person known as Cheech, or Joe
23 Martinez, were at a place where they could cross
24 paths?

25 A. Yes.

1 Q. If we can pull them up side by side, we'll
2 display Government's Exhibits 788 and 789. For the
3 record, on the screen are two exhibits, 788 and 789.
4 On the left is 788. It's Joe Patrick Martinez'
5 location history, and 789 is David Calbert's
6 location history. I've tried to block off a portion
7 of Joe Patrick Martinez' location history, showing
8 location at PNM North, showing dates 9/30 of '11 and
9 ending 4/11 of 2013. Do you see that?

10 A. Yes, sir.

11 Q. And for Mr. Calbert, I basically blocked
12 off the dates July 14, 2011, all the way up to March
13 7th of 2014. Do you see that?

14 A. Yes.

15 Q. And in that time period, there is an
16 indication that both gentlemen were at the North
17 facility?

18 A. Yes.

19 Q. At one point, Mr. Calbert's -- touching
20 next to the date 5/2 of '13, do you see where he's
21 in Housing Unit 3-A?

22 A. Yes, at the north, North 3-A.

23 Q. And on the left with Mr. Martinez, do you
24 see he's at Housing Unit 3-B?

25 A. Yes.

1 Q. Was it your understanding that among other
2 times where they overlapped, that when people were
3 in the same housing unit, sometimes they would be at
4 rec at the same time?

5 A. Yes.

6 Q. And then on David Calbert's, is there an
7 indication after this time where he moved from the
8 North to the South facility?

9 A. Yes.

10 Q. That is February 13th of 2014?

11 A. Yes.

12 Q. And is it your understanding that that's
13 where he passed the paperwork to Lupe Urquizo, at
14 the South facility?

15 A. Yes.

16 Q. Regarding the passing of the paperwork,
17 you testified on direct examination that you talked
18 to correction officers, and they said that was
19 possible?

20 A. Correct.

21 Q. You were also asked about Robert Martinez'
22 61-page statement that he wrote. Do you remember
23 that?

24 A. Yes, sir.

25 Q. And there was a question about 167 people

1 named as SNM members by Robert Martinez?

2 A. Yes.

3 Q. Do you know if Robert Martinez knew who
4 all SNM members were?

5 A. No, he didn't.

6 Q. And as far as the investigation goes, how
7 many -- approximately how many SNM members have you
8 been aware of?

9 A. Around 500.

10 Q. So is it your testimony that Mr. Martinez
11 gave you a portion of those who he knew?

12 A. He did. And he put question marks and
13 blanks, too, like he was having trouble remembering
14 other members.

15 Q. And you were asked by Mr. Perez' attorney
16 if Rudy Perez's name was on that list. Do you
17 remember?

18 A. I do.

19 Q. Your response was that he was not on that
20 list.

21 A. That's right.

22 Q. So do you know if Robert Martinez knew
23 Rudy Perez?

24 A. I don't.

25 Q. Would that surprise you?

1 A. Would that surprise me?

2 Q. Correct.

3 A. No.

4 Q. Do you recall if other people's names were
5 on that list?

6 A. Yes.

7 Q. Including Daniel Sanchez?

8 A. His name is on the list.

9 Q. As well as Carlos Herrera?

10 A. Yes.

11 Q. And is Daniel Sanchez listed as a shot
12 caller on that list?

13 A. Yes.

14 Q. As well as -- well, to be fair to Mr.
15 Herrera, what do you recall about --

16 MR. MAYNARD: Your Honor, objection. This
17 is beyond the scope of any direct examination. The
18 Government is just repeating its case.

19 MR. CASTELLANO: Your Honor, this is in
20 response to --

21 THE COURT: Yes, I see the connection.
22 Overruled.

23 Q. Okay. So to be fair to Mr. Herrera, what
24 was Mr. Martinez' indication about who Carlos
25 Herrera was?

1 A. Possible shot caller.

2 Q. So as far as he knew, he could only say
3 possible shot caller?

4 A. That's what he wrote.

5 Q. And you were also asked about Blue or
6 Mario Rodriguez being on there. And according to
7 Robert Martinez, he indicated that Mr. Rodriguez was
8 a shot caller?

9 A. He did.

10 Q. And when you asked this information of
11 Mr. Martinez, was this before or after the Molina
12 murder?

13 A. After. Well after.

14 Q. Was there an occasion following the Molina
15 murder that Mr. Rodriguez had gained some additional
16 stature in the gang?

17 A. Yeah. Not only that, but the assault on
18 Sosoya, so both incidents.

19 Q. You were also asked about Defendants' EV.
20 Can we have Defendants' EV, please? And while
21 that's coming up, we'll ask you some questions about
22 that. That involves the shanks that Mr. Rodriguez
23 turned over?

24 A. I remember.

25 Q. Was that following his debrief, basically,

1 with us?

2 A. Yes.

3 Q. And do you remember him sitting in that
4 debrief with us, with shanks in his rectum?

5 A. Yes.

6 Q. Did we find out about that only through
7 him?

8 A. Yes.

9 Q. What significance did it have to you that
10 Mr. Rodriguez was basically laying down his arms and
11 turning over his weapons?

12 A. It was done. There was no turning back.

13 Q. In fact, you said on direct examination
14 that when he came to court, he even brought those
15 with him?

16 A. Several times, yes.

17 Q. You also were asked -- actually, on direct
18 examination this morning you indicated that
19 Mr. Billy Cordova had used drugs, and he'd also
20 brought a shank to court. Do you remember that?

21 A. He sat right here in this very chair with
22 a shank.

23 Q. On the witness stand?

24 A. Yes.

25 Q. Do you recall why he brought a shank to

1 court?

2 A. Yes.

3 Q. Why?

4 A. He thought he was in danger, was going to
5 be attacked by SNM members.

6 Q. Was that for self-protection?

7 A. Yes.

8 Q. Okay. Now up on the screen is Defendants'
9 EV. So that was turned over to the Marshal Service
10 following Mr. Rodriguez' debrief?

11 A. Yes.

12 Q. And if you recall -- I don't want to go
13 through all the exhibits, but if you recall, what is
14 inside what's pictured in Defendants' EV?

15 A. There's two shanks inside that photo, in
16 the wrapping.

17 Q. Okay. And the same question regarding
18 these letters by Mr. Rodriguez regarding the state
19 court proceedings and the letters by Jerry Armenta
20 to Jerry Montoya's attorney. Do you remember those
21 things?

22 A. Yes.

23 Q. And did that happen during the state
24 proceedings?

25 A. Yes, it did.

1 Q. Did you see those guys do that in the
2 federal case?

3 A. No. I want to back up on something. I
4 haven't seen them write letters to attorneys. I've
5 seen them write letters to non-cooperators that are
6 their friends. So I just want to make that clear,
7 that some of the guys have written letters, but not
8 where they're swearing under penalty of perjury, you
9 know, trying to make a record of it in the case.

10 Q. So that's fair. So you can say that
11 people have communicated with each other?

12 A. Yes.

13 Q. Were they similar communications to them,
14 trying to basically put a fraud on the Court?

15 A. No. They're quite the opposite. It's --
16 I'll just leave it at that. It's the opposite.

17 Q. Going back to the meeting with Mr.
18 Rodriguez and Ronald Sanchez, you were asked about
19 it a few times now?

20 A. Yes.

21 Q. Remind us who wanted that meeting.

22 A. Who is -- I'm sorry.

23 Q. Who wanted that meeting?

24 A. Ronald Sanchez asked to meet with us.

25 Q. What were the three questions he asked

1 you?

2 A. That was a long meeting, but the three
3 premises were what kind of plea deal could Daniel
4 get; could Ronald and Daniel do their time together,
5 either in the feds or in the state; and what could
6 we do for Ronald Sanchez's sentence that he was
7 currently in prison on.

8 Q. So was Mr. Sanchez' -- was Daniel
9 Sanchez's brother trying to negotiate a deal for his
10 brother?

11 A. Yes.

12 Q. And they're brothers, right? So you'd
13 think they would talk?

14 A. I know that they talked.

15 Q. And, in fact, when the Molina murder went
16 down, can we see Ronald Sanchez standing next to
17 Daniel Sanchez?

18 A. Yes. He's to the left of him in the
19 video, sometimes standing, sometimes seated.

20 Q. Now, you don't know about the
21 conversations between the two of them, right?

22 A. Only the ones that have been recorded.

23 Q. But you do know that Ronald Sanchez was
24 trying to get a deal for his brother?

25 A. Yes.

1 Q. You've been asked about Billy Cordova and
2 his murders or his bragging? Do you remember that?

3 A. Yes.

4 Q. Now, what evidence did you have that Billy
5 Cordova killed Sammy Chavez? Well, let me ask you
6 this: Was Billy Cordova in jail at the time Sammy
7 Chavez was murdered?

8 A. He was.

9 Q. Would you have threatened --

10 A. He was actually in prison. A small
11 distinction, but he was in prison.

12 Q. Would you threaten Billy Cordova, over
13 something like that, with the death penalty?

14 A. No.

15 Q. What about this discussion about any
16 indication that he was involved with the Shane Dix
17 murder?

18 A. Did I threaten him with that?

19 Q. Correct.

20 A. No. I didn't believe he participated in
21 it.

22 Q. Could you prove it if you tried today?

23 A. No.

24 Q. Now, you were asked about there's an
25 indication about Rudy Perez and his statements. So

1 if you look at the evidence against someone like
2 Billy Cordova --

3 MS. FOX-YOUNG: Your Honor, may we
4 approach?

5 THE COURT: You may.

6 (The following proceedings were held at
7 the bench.)

8 MS. FOX-YOUNG: Your Honor, I'm not sure
9 which statements. The Government says: You were
10 asked about statements by Rudy Perez.

11 I'm not sure what statements the
12 Government is referring to.

13 THE COURT: Which statements are you
14 referring to?

15 MR. CASTELLANO: This will be referring to
16 the recordings, Your Honor.

17 MS. FOX-YOUNG: And, Your Honor, I have
18 not brought that up at all in my direct. This is
19 not the Government's closing. It's not an
20 opportunity to rehash their case-in-chief. It's
21 beyond the scope. And I've looked through the
22 transcript. I can't find anywhere where anything on
23 the subject was elicited in direct of Agent Acee.
24 They did this ad nauseam in their case-in-chief.

25 THE COURT: If you're referring to the

1 tape recordings what was asked about to start with,
2 Ms. Fox-Young what was asked about those recordings
3 of Mr. Acee --

4 MR. CASTELLANO: It was well within the
5 scope. They asked about Billy Cordova bragging
6 about things he didn't do. And so they're trying to
7 imply that Rudy Perez, also Red, bragged about
8 things he didn't do, and he talked about his
9 involvement in the murder of Javier Molina.

10 MS. FOX-YOUNG: But I never asked those
11 questions.

12 THE COURT: Here's what I'd be inclined to
13 do. If you want to ask questions about Billy
14 Cordova bragging, I think that would be fair game.
15 But why don't we not go back into the statements on
16 Mr. Perez, and leave that for closing arguments.

17 MR. CASTELLANO: Sure.

18 THE COURT: I think that's probably where
19 that should be.

20 MR. CASTELLANO: Sure, Your Honor.

21 MS. FOX-YOUNG: Thank you.

22 (The following proceedings were held in
23 open court.)

24 THE COURT: All right. Mr. Castellano.

25 BY MR. CASTELLANO:

1 Q. When it comes to proof against Billy
2 Cordova, did you have recordings of Billy Cordova?

3 A. In the homicide?

4 Q. Yes. Because we've been talking about
5 Sammy Chavez and Shane Dix. Did you have any
6 recordings of his involvement? For example, did
7 somebody record him talking about his involvement in
8 those murders?

9 A. No.

10 Q. To law enforcement?

11 A. No.

12 Q. Did you have any indication that he was in
13 the area of either of those murders?

14 A. No.

15 Q. So would information like that be
16 important to you in helping them make a charging
17 decision?

18 A. Absolutely.

19 Q. You were asked about phone calls. You
20 heard some of the phone calls played in court, of
21 the cooperators. Do you remember that?

22 A. Yes.

23 Q. Do you remember there being two basic
24 themes? One is lying to family about how much time
25 they're going to get; and lying to family about why

1 they're cooperating?

2 A. Yes.

3 Q. And how was that significant?

4 MS. FOX-YOUNG: Your Honor, I think in
5 accordance with your previous rulings, it's up to
6 the jury to determine when and if the government
7 witnesses are lying.

8 MR. CASTELLANO: They admitted they lied
9 on the stand, Your Honor, in the phone calls.

10 THE COURT: Well, I think that this is a
11 lead-in question, or at least a lead-in comment.
12 Why don't ask you the question and let me hear what
13 your question is going to be, rather than trying to
14 characterize or remind the witness of the evidence.

15 MR. CASTELLANO: Sure.

16 THE COURT: Maybe that will avoid that
17 problem.

18 BY MR. CASTELLANO:

19 Q. Do you remember hearing conversations
20 played in court for some of the cooperators?

21 A. Yes.

22 Q. And did some of those conversations, maybe
23 all of them, involve family members?

24 A. Yes.

25 Q. And what do you recall -- from your own

1 recollection, what do you recall them saying when it
2 comes to the topics of how much time they're going
3 to get or why they're cooperating?

4 A. They minimized the time that they were
5 facing greatly, very significantly. And then in
6 terms of why they were cooperating, they made it
7 sound as if they were doing it to protect their
8 families from prosecution, from us, the FBI.

9 Q. And so for someone talking to a family
10 member, what's your impression of why they would
11 tell someone they would be home sooner rather than
12 later?

13 MS. BHALLA: Objection, speculation.

14 THE COURT: Well, I think at this point
15 you've laid out what he's seen, but do I think that
16 the jury can make its own conclusion about that, so
17 I'll sustain.

18 BY MR. CASTELLANO:

19 Q. You were asked about trusting Billy
20 Cordova to a certain extent. Can you elaborate on
21 that, please?

22 A. Yes.

23 Q. Go ahead.

24 A. Would you like me to talk about the areas
25 where I wouldn't trust him, or don't?

1 Q. Absolutely. I want to talk about where
2 you trust him, and where you don't.

3 A. Billy Cordova is alone in the room with
4 his wife. I don't trust what he's going to do. If
5 Billy Cordova is offered drugs, I'm not sure what
6 decision he's going to make, to use them or not use
7 them. If I task Billy Cordova with doing a specific
8 task, I trust that he'll do it and he'll follow my
9 instructions.

10 Q. Now, when it goes to the tablets, you
11 indicated that two people actually emailed you from
12 the facility?

13 A. Yes.

14 Q. Who were those people?

15 A. The first one was Benjamin Clark, because
16 I asked him to. I didn't believe he could access
17 the internet from the tablet, so I said, "Send me an
18 email. Here's my address." We had that
19 conversation at the jail. He wasn't able to bring
20 his tablet in at that time, but his attorneys were
21 there. So that's the only person I asked to email
22 me. He did some hours later, though? And when that
23 happened, I notified the prosecution.

24 And then when I woke up the next morning,
25 I had a second email of Jerry Armenta, and attached

1 to that was a photo where he somehow was able to
2 take a selfie with his tablet, and he was just kind
3 of standing there like that, and attached that to
4 the email.

5 Q. Was each of those two people, I guess, in
6 essence, indicating to you that they had tampered
7 with their tablets?

8 A. Yes.

9 Q. And you learned that from them?

10 A. Yes. I had no idea until that happened.

11 Q. You were also asked about cutting people
12 off as confidential human sources, right?

13 A. Yes.

14 Q. And as a result of this conduct and other
15 people's misconduct, you cut them off?

16 A. Right away. I'm looking for a reason most
17 of the time.

18 Q. So what --

19 MS. FOX-YOUNG: Your Honor, I think this
20 mischaracterizes his testimony. They weren't cut
21 off after the tablets.

22 THE COURT: I'll let you deal with that on
23 redirect.

24 MR. CASTELLANO: I'll clarify
25 "misconduct," Your Honor.

1 BY MR. CASTELLANO:

2 Q. Following misconduct, Agent Acee, were
3 people cut off as confidential human sources?

4 A. They were closed as confidential human
5 sources.

6 Q. And did that relieve them of their
7 obligations to be witnesses at trial?

8 A. Those are two distinctly different
9 categories.

10 Q. Regarding Billy Cordova being cut off and
11 still recording somebody, at whose request was that?

12 A. The Department of Corrections.

13 Q. So even though the FBI provided the
14 equipment, was it the FBI's operation, or did you
15 aid them in recording someone else?

16 A. An FBI agent in this case, Agent Stemo,
17 aided them. They don't have their own recording
18 devices; we provided that. And it was on an active
19 open FBI investigation. It's also not against
20 policy to do so.

21 Q. The question is: Can somebody help the
22 FBI without being a confidential human source?

23 A. Yes. Anyone can.

24 Q. Is that significant, whether he was a
25 source or not when he aided law enforcement?

1 A. No.

2 Q. You were also asked about Billy Cordova's
3 statement in December of 2017, where he indicated
4 that Daniel Sanchez asked for a shank a week before
5 the Molina murder?

6 A. Yes, it was about a week.

7 Q. And do you remember him actually
8 correcting that statement in January of 2018,
9 indicating that it was on March 6th or 7th?

10 A. Yes.

11 Q. So did he actually correct his previous
12 statement?

13 A. He did.

14 Q. Now, I'd say virtually every cooperating
15 witness in this case at some point has admitted to
16 drug use, and a long history of drug use. Are you
17 aware of that?

18 A. Yes.

19 Q. So for people like Billy Cordova, were you
20 surprised when each of them used drugs even while
21 they were cooperating witnesses?

22 A. Not surprised, but disappointed.

23 Q. Why were you not surprised?

24 A. Substance abuse grips a lot of people, and
25 it affects our whole country. It's difficult,

1 particularly for these guys who have used drugs, in
2 some cases, since they were in middle school.

3 Q. Okay. And so can you just tell someone,
4 "Don't use drugs," and automatically they never use
5 drugs again?

6 A. I wish I could, but no.

7 Q. You were also asked about whether or not
8 certain cooperators were able to basically write
9 their own indictments. Do you remember that?

10 A. Yes.

11 Q. Including people like Freddie Muñoz and
12 Lupe Urquizo?

13 A. I recall that.

14 Q. Did they get to write their own
15 indictments?

16 A. No.

17 Q. Did they actually participate in telling
18 you things they had done criminally so we could put
19 that into their charging documents?

20 A. Yes, they did.

21 Q. Did they volunteer that information?

22 A. They volunteered it.

23 Q. I think Lupe Urquizo was impeached with --
24 what did he say? -- maybe like 29 or maybe more?

25 A. Yes, that sounds right. I think it was 29

1 overt acts in his RICO conspiracy.

2 Q. Is that how someone like Lupe Urquizo or
3 Freddie Nunez helped write their indictments, is by
4 telling you about their past misdeeds?

5 A. Yes.

6 Q. You've been asked about Billy Cordova and
7 at least one other cooperator not being charged in
8 this case. Do you remember that?

9 A. Yes.

10 Q. Does the fact that someone else hasn't
11 been charged mean that other people aren't guilty of
12 offenses?

13 A. No.

14 Q. Including the men sitting in this court?

15 A. Correct.

16 Q. In a meeting with David Calbert and Lupe
17 Urquizo, you were asked about that, as well, and the
18 time they got to meet?

19 A. Yes.

20 Q. Were there attorneys in the room with
21 them?

22 A. Yes.

23 Q. And so if those two had basically agreed
24 to make up a story, would they have had to do so
25 with their lawyers in the room?

1 A. Yes.

2 Q. And are those lawyers bound by ethical
3 rules?

4 A. Yes, they are.

5 MS. FOX-YOUNG: Your Honor, foundation.

6 THE COURT: Overruled.

7 MS. FOX-YOUNG: And this also goes to
8 attorney-client privilege.

9 THE COURT: Overruled.

10 BY MR. CASTELLANO:

11 Q. And regarding those two gentlemen, you
12 were asked about their stories about whether there
13 was one paper or two pages, one or two pages. Okay?
14 Would the difference of one page between them, off
15 and on, do you recall if they each told you it was
16 an LCPD report?

17 A. Yes, they thought that it was.

18 Q. Regarding some sort of robbery?

19 A. Yes.

20 Q. And do you know if people, just anyone on
21 the street, know the difference between a robbery
22 and a strong-armed robbery?

23 A. No. They often confuse burglary and
24 robbery, too.

25 Q. So if someone tells you a strong-armed

1 robbery, does that --

2 MS. JACKS: Your Honor, I object to this
3 line of questioning. It's irrelevant what someone
4 on the street knows. The witnesses have testified
5 about their knowledge.

6 THE COURT: He can testify about what he
7 thinks strong-armed robbery is since that term has
8 been used and it has been used by him, but probably
9 that's about it.

10 BY MR. CASTELLANO:

11 Q. Go ahead, Agent Acee.

12 A. I need you to repeat the question.

13 THE COURT: Yeah, I don't think he needs
14 to answer that question. If you want to talk about
15 his understanding of what a strong-armed robbery is
16 and what he meant by it and why he used that term, I
17 think that's fair game because that's what he
18 testified. But as far as probably the public or
19 people in general, I don't think that has much
20 benefit.

21 A. So I use that term because I focused on
22 Molina's statement to the police, which was
23 recorded. There was a transcript. Molina claims
24 there was no gun involved.

25 MS. JACKS: Objection, hearsay.

1 THE COURT: Well, I'm not remembering the
2 statement, but if it's being offered for the truth,
3 then I need to sustain.

4 MS. JACKS: Can we strike the answer,
5 please?

6 THE COURT: Okay. I'll strike the answer.
7 BY MR. CASTELLANO:

8 Q. You don't have to tell us what you read in
9 the reports, but are you generally aware of that
10 investigation?

11 A. Yes.

12 Q. Are you aware it's an LCPD investigation?

13 A. It is. Or it was.

14 Q. And are you aware of whether or not
15 Mr. Calbert and Mr. Urquizo also indicated it was an
16 LCPD investigation?

17 A. They did.

18 MR. CASTELLANO: May I have a moment, Your
19 Honor?

20 THE COURT: You may.

21 MR. CASTELLANO: Thank you, Your Honor. I
22 pass the witness.

23 THE COURT: Thank you, Mr. Castellano.

24 Who would like to go first with redirect?
25 Mr. Lowry.

1 MR. LOWRY: Well --

2 MS. BHALLA: Can we have just a moment,
3 Your Honor?

4 THE COURT: You may.

5 MR. CASTELLANO: Your Honor, I'm sorry. I
6 did have one more question. I apologize. It's
7 here, waiting for me at the podium.

8 BY MR. CASTELLANO:

9 Q. Agent Acee, you were asked about Mario
10 Rodriguez and his prior sex offenses. Do you
11 remember that?

12 A. Yes.

13 Q. I'm going to show you on the visualizer,
14 if I can, paperwork related to that offense. And
15 for the record, this is from Mario Rodriguez's,
16 what's called pen pack of his prior convictions.

17 A. Yes, sir.

18 Q. Beginning on Bates stamp 8778.

19 MS. JACKS: Has this been admitted as an
20 exhibit?

21 MR. CASTELLANO: I think it has. I can
22 double-check.

23 THE COURT: Why don't you give the exhibit
24 number.

25 MS. FOX-YOUNG: Your Honor, I'd ask, if

1 we're not sure it's been admitted, that it be taken
2 down.

3 THE COURT: It's already off.

4 MR. CASTELLANO: Thank you, Your Honor.
5 It has been admitted as Government's Exhibit 238.

6 BY MR. CASTELLANO:

7 Q. So once again, Agent Acee, I'm going to
8 show you beginning on page -- well, first of all, on
9 8781, can you see that this is a judgment and
10 commitment for Mario Rodriguez?

11 A. Yes.

12 Q. And then on the next page of his judgment,
13 8782, these are the charges we discussed already,
14 correct?

15 A. Yes.

16 Q. Including his criminal sexual penetration
17 convictions?

18 A. Yes.

19 Q. I'm going to have you look carefully at
20 this document, each page. I'm going to ask you if
21 there is an indication in here that he must register
22 as a sex offender? So that's what I'm asking you to
23 look for.

24 A. Okay.

25 Q. Turning to that page, do you see anything

1 on there?

2 A. No.

3 Q. Turning to page 8783, I'll make it larger
4 for you. I apologize.

5 A. No, I got through it. In the language
6 here where it's indicating what must happen, it
7 doesn't indicate about registration.

8 Q. So right now, this page indicates how much
9 time he's supposed to get for each of the charges?

10 A. Correct, and how much time he'll serve on
11 post supervision.

12 Q. Correct. So, for example, you make a good
13 point here. I'm going to circle just one portion
14 which says he gets a basic sentence of 18 months
15 followed by one year of parole?

16 A. Correct.

17 Q. So when he gets out of prison, he has an
18 idea of whether or not he's going to be supervised
19 or not?

20 A. Yes, what his post-prison conditions are.

21 Q. That's 8783. I'm going to show you page
22 8784.

23 A. This continues with what his sentencing
24 will be, but there's no indication of registering as
25 a sex offender.

1 Q. Final page of that documents, 8785.

2 A. This is on the top just in terms of appeal
3 and cost and then signatures, so no indications of
4 registering as a sex offender.

5 Q. So if Mr. Rodriguez pled guilty and he
6 wasn't advised in his judgment of having to register
7 as a sex offender, do you understand why he would be
8 upset about that?

9 MS. JACKS: Objection, Your Honor. First
10 of all, it's irrelevant what this witness
11 understands.

12 THE COURT: Sustained.

13 Q. Are you aware that Mr. Rodriguez is upset
14 about that?

15 A. Yes.

16 Q. And do you recall defense counsel
17 impeaching him with things he's filed with the
18 Court, trying to get that overturned because he was
19 not aware of that?

20 A. Yes.

21 Q. Have you seen judgments before, where
22 people are notified of certain things that are
23 expected of them following their conviction?

24 A. Yes.

25 Q. I'm going to show you Government's Exhibit

1 777 which has already been admitted. Do you
2 recognize this document?

3 A. Yes, sir.

4 Q. After this document was admitted did you
5 notice one or two mistakes in your entries?

6 A. Yes.

7 Q. And have you prepared an updated,
8 corrected version so we have the accurate
9 information in the table?

10 A. Yes, I did.

11 MR. CASTELLANO: Your Honor, at this time
12 I move either to substitute the update of the
13 Exhibit 777, or I can label it 777-A so we can see
14 the differences between the two.

15 THE COURT: Defendants' thought? Mr.
16 Lowry?

17 MR. LOWRY: Yes, Your Honor. This exhibit
18 was not admitted. There was conditional admittance.
19 I would ask that the Court refrain from ruling on
20 its admission until after we question the agent
21 about it.

22 THE COURT: All right. Let's wait until
23 they've had a chance to voir dire the witness on it.

24 MR. CASTELLANO: Just for purposes of
25 identification, Your Honor, so there is no mistake

1 between the two documents, I'm going to label the
2 updated version Exhibit 777-A, and I'll move its
3 admission pursuant to the Court ruling on it.

4 THE COURT: All right.

5 MR. CASTELLANO: And I'll leave it here at
6 the podium for counsel.

7 THE COURT: All right.

8 BY MR. CASTELLANO:

9 Q. Agent Acee, how did the updated version of
10 the table come about?

11 A. I created the first one here in court
12 while I was seated at the table, and I was only able
13 to use hard copies of reports that I had in one of
14 my boxes there. I created the second one when I
15 went back to the actual FBI office. I was able to
16 get on the computer and verify what we actually had,
17 where the official reports were stored. I noticed a
18 couple dates were wrong, and I noticed some
19 additional reports that I didn't have here in the
20 courtroom.

21 Q. So you updated the document now with
22 information from the computer?

23 A. Yes, sir.

24 MR. CASTELLANO: I pass the witness, Your
25 Honor.

1 THE COURT: All right. Thank you, Mr.
2 Castellano.

3 Ms. Bhalla, did you want to go next?

4 MS. BHALLA: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. BHALLA:

7 Q. Agent Acee, are you aware that the defense
8 requested field notes from you and other FBI agents
9 on the case, in regards to the prosecution of this
10 case?

11 A. Yes, ma'am.

12 Q. And you are aware that those were ordered
13 to be produced in 2017?

14 MR. CASTELLANO: Objection, Your Honor.
15 That misstates the facts.

16 THE COURT: Well, I'll let him testify as
17 to his understanding. Overruled.

18 BY MS. BHALLA:

19 Q. Thank you.

20 A. Do you want me to answer? Or no?

21 Q. Yes, please. I think you already answered
22 it, didn't you?

23 A. No.

24 Q. Okay. Then go ahead and answer it,
25 please.

1 A. I recall some pretrial hearings on that.
2 But I was asked to review my notes, but not produce
3 them.

4 Q. Okay. So you were asked to review them,
5 but not produce them, and that's your understanding
6 of it?

7 A. No, there's more to that. I'm sorry.

8 Q. Okay.

9 A. We were asked to review them, and if
10 they contained material facts or exculpatory
11 information --

12 Q. Okay.

13 A. -- not in the 302, that we should bring
14 those over.

15 Q. Okay.

16 A. Then yesterday I was asked -- or I was in
17 the courtroom when the Court ordered that we turn
18 the rest of them over, so myself and four other
19 agents did that all night, last night.

20 Q. Okay. And you put them on a disc?

21 A. I didn't. I gave my original notes to a
22 paralegal at the U.S. Attorney's office, who still
23 has them.

24 Q. Okay. Would you agree with me that we got
25 a disc today?

1 A. Yes.

2 Q. And would you agree with me that for the
3 most part, you know what's on this disc?

4 A. For the most part, yes.

5 Q. And would you agree with me that this
6 summarized the contents of what was on the disc that
7 was produced to the defendants this morning in court
8 after the Government rested their case-in-chief? Do
9 you want to look at them?

10 A. Based on the size of the documents you're
11 holding, that looks about right.

12 Q. Thank you.

13 MS. BHALLA: Your Honor, I pass the
14 witness.

15 THE COURT: Thank you, Ms. Bhalla.

16 Mr. Lowry, do you have redirect?

17 MR. LOWRY: Yes, Your Honor.

18 THE COURT: Mr. Lowry.

19 REDIRECT EXAMINATION

20 BY MR. LOWRY:

21 Q. Good morning, Agent Acee.

22 A. Good morning.

23 Q. Agent, I want to start off with asking you
24 a few questions following up with Eric Duran. I
25 think Mr. Montoya -- you understand what a

1 controlled buy is, correct?

2 A. Yes, sir.

3 Q. The protocol for a controlled buy is --
4 well, it's a highly scripted event, is it not?

5 A. No, but we control it.

6 Q. Well, when I say "highly scripted," you
7 just don't send somebody out and say, "Go buy some
8 drugs and come back and talk to me," do you?

9 A. I don't, no.

10 Q. And probably nobody that's working with
11 the FBI would do it that way?

12 A. They shouldn't be.

13 Q. Right. And that's because there is a
14 series of steps you take to make sure about the
15 accuracy of the drugs that are obtained, and the
16 target and how they're obtained, correct?

17 A. We do our best to control that environment
18 and that interaction, yes.

19 Q. Right. And you do that by meeting with
20 the individual you're working with, either the
21 undercover agent or a confidential human source?

22 A. Yes, sir.

23 Q. And you completely search them to make
24 sure they don't have any drugs or contraband on
25 them?

1 A. Correct.

2 Q. Then you provide them with the controlled
3 buy funds to purchase the drugs?

4 A. Yes.

5 Q. And then you send them to the target who
6 has the drugs that they're going to buy, correct?

7 A. Yes, all the while under surveillance.
8 Exactly.

9 THE COURT: Mr. Lowry, let's talk to the
10 jury a little bit about what they'd like to do. Our
11 break is kind of coming a little later this morning
12 because I met with the attorneys this morning. Do
13 y'all want to take a 15-minute break and then come
14 back, and have a late lunch? How many of you want
15 to do that, like we've been doing? All right. It
16 looks like most people. Does that work for the
17 parties and for the lawyers? All right.

18 So why don't we take about a 15-minute
19 break, and we'll come back in and we'll do a late
20 lunch.

21 All rise.

22 (The jury left the courtroom.)

23 THE COURT: All right. We'll be in recess
24 for about 15 minutes.

25 (The Court stood in recess.)

1 THE COURT: All right. We'll go back on
2 the record. Is there anything we need to discuss
3 before we bring the jury in? Anything I can do for
4 you? From the Government, Mr. Castellano, Ms.
5 Armijo?

6 MS. ARMIJO: No, Your Honor. Thank you.

7 THE COURT: How about you, Ms. Fox-Young?

8 MS. FOX-YOUNG: Your Honor, just as part
9 of the record of the hearing the Court conducted,
10 I'd like to move the admission of the agent notes
11 that we just received while Agent Acee has been on
12 the stand. And I'm not sure what the next exhibit
13 number is.

14 THE COURT: You want it to be --

15 MS. FOX-YOUNG: For yesterday's hearing.

16 MR. VILLA: That's what we want.

17 THE COURT: All right. I've got it as GA,
18 was the last one that was --

19 MS. JACKS: Your Honor, I think that's a
20 trial exhibit.

21 MR. VILLA: Yesterday.

22 MS. JACKS: And I think what Ms. Fox-Young
23 is asking is to number, or to letter the exhibit
24 pursuant to the hearing yesterday.

25 THE COURT: So I think that the last one

1 was Exhibit H.

2 MS. GILMAN: I have T.

3 THE COURT: Well, you're correct. I mean,
4 they were out of order, so I guess if you're asking
5 for that, T would be the last one.

6 MS. GILMAN: So this one would be U.

7 THE COURT: All right. Any objection from
8 the Government?

9 MS. ARMIJO: No, Your Honor.

10 THE COURT: All right. Does any other
11 defendant have any objection?

12 All right. Defendants' Exhibit U will be
13 admitted to the, I guess what we're calling the
14 Brady hearing.

15 (Defendants' Exhibit U admitted.)

16 MS. FOX-YOUNG: Okay. And, Your Honor,
17 I'd just like to note that it was received, I think
18 it was approximately 11:00 today, by the defense. I
19 don't have the exact time, although I guess the
20 record will reflect that. Thank you, Your Honor.

21 THE COURT: Did you have some things,
22 Ms. Jacks?

23 MS. JACKS: Your Honor, I just wanted to
24 add to that. I used my computer to count the pages.
25 That's 482 pages of agent notes. So that, by my

1 calculation, probably would require something along
2 the lines of six to eight hours to actually review,
3 and probably double that to compare that to the 302s
4 that they correspond to.

5 THE COURT: All right.

6 MS. JACKS: And these notes are
7 handwritten, so you can't use OCR or any sort of
8 computer tricks to search them for important
9 materials. I mean, it's ridiculous to have this
10 amount of material dumped on us the last day of
11 evidence in this trial.

12 THE COURT: All right.

13 All rise.

14 (The jury entered the courtroom.)

15 THE COURT: All right. Please be seated.

16 Mr. Acee, I'll remind you that you're
17 still under oath.

18 Mr. Lowry, if you wish to continue your
19 redirect of Mr. Acee, you may do so at this time.

20 MR. LOWRY: Thank you, Your Honor.

21 BY MR. LOWRY:

22 Q. So we were talking about the mechanics of
23 a controlled purchase, and I think we left off, you
24 send your undercover to the house or to the
25 location, correct?

1 A. Yes, sir.

2 Q. And they would -- and they're under
3 observation as best as you can perform it all the
4 time?

5 A. Yes.

6 Q. And if they go inside the house or
7 something like that, obviously you can't be inside
8 the house?

9 A. No, but we could have a live -- a live
10 wire or something like that.

11 Q. You have a button camera or something?

12 A. A live wire or something like that. But
13 yes, we don't go in with them.

14 Q. And then the controlled buy takes place,
15 and they exchange money for drugs or contraband or
16 weapons or whatever?

17 A. Sure.

18 Q. And then hopefully, they exit the
19 structure or the location?

20 A. Yes.

21 Q. And return to a prearranged meeting place,
22 while you're observing them the whole time, like a
23 church, a parking lot, where you can rendezvous with
24 the undercover, correct?

25 A. Yes.

1 Q. And at that time you re-search the
2 undercover to see what they have on them, that
3 individual, correct?

4 A. Yes, sir. We should clarify we're talking
5 about an informant. If it's an actual FBI agent,
6 we're not searching them.

7 Q. Not going to do that? Okay. An
8 informant. An informant would be someone like Mario
9 Montoya?

10 A. Yes, sir.

11 Q. Or Eric Duran?

12 A. Correct.

13 Q. And you would search them?

14 A. Yes.

15 Q. And recover the controlled substance or
16 whatever elicit contraband you're looking for?

17 A. Yeah, in addition to making sure there is
18 no left-over money.

19 Q. Correct. You keep a strict accounting of
20 all the cash and everything?

21 A. Yes, sir.

22 Q. And all of that is a fairly meticulous
23 process that you supervised from beginning to end?

24 A. Correct.

25 Q. So it wouldn't be the case where you would

1 leave your informant passed out in a car?

2 A. No. That doesn't help my investigation.

3 Q. And, in fact, when Mr. Duran was picked
4 up, passed out in a car, he wasn't on an FBI
5 investigation, was he?

6 MR. CASTELLANO: Objection, calls for
7 hearsay.

8 THE COURT: It would.

9 MR. LOWRY: Okay.

10 THE COURT: Sustained.

11 BY MR. LOWRY:

12 Q. To your knowledge, was Mr. Duran -- in
13 your understanding was Mr. Duran ever authorized to
14 engage in controlled buys?

15 MR. CASTELLANO: Objection, calls for
16 hearsay.

17 MR. LOWRY: I'm asking for his
18 understanding.

19 THE COURT: If he knows. He's an FBI
20 agent, and he was supervising him.

21 MR. CASTELLANO: I'd object to hearsay.
22 He's asking about the other state's investigation in
23 which he was not involved.

24 THE COURT: Well, right now it's a yes or
25 no question. Overruled.

1 BY MR. LOWRY:

2 A. Yes.

3 Q. Yes, you have an understanding?

4 A. Yes.

5 Q. And is it your understanding that
6 Mr. Duran, in November of 2017, wasn't authorized to
7 make controlled purchases?

8 MR. CASTELLANO: Objection, calls for
9 hearsay.

10 THE COURT: Overruled.

11 A. I need to explain.

12 Q. I'm just asking. Mr. Castellano is
13 concerned about hearsay. I just want a simple yes
14 or no.

15 A. In early November he was still an FBI
16 informant and he could have been used to make buys.
17 I think he was. I'm just not clear on the dates.

18 MR. LOWRY: May I approach, Your Honor?

19 THE COURT: You may.

20 A. Yes, sir, I've read the first paragraph.

21 Q. Did that refresh your recollection about
22 whether Mr. Duran was authorized to purchase drugs?

23 A. That was helpful, yes.

24 Q. And was he authorized to purchase drugs,
25 in your understanding, in November of 2017?

1 A. The answer is yes. But in that email you
2 showed me, that's related to his arrest. He was
3 not.

4 Q. He was not authorized in that situation?

5 A. Correct.

6 Q. Nor was he authorized to possess any kind
7 of firearm?

8 A. Not unless it was part of an FBI
9 operation. Outside of that, no.

10 Q. Which is why you testified in this case
11 about getting DNA off the weapon, to analyze the
12 weapon for potential future prosecution?

13 A. Correct, sir.

14 Q. He's not being prosecuted today?

15 A. We're pursuing it.

16 Q. Now, Mr. Duran -- we've heard
17 conversations just today, the audio conversations
18 between Mr. Duran and others. It's fair to say that
19 that clip, the audio clip we heard between Chris
20 Garcia and Mario Montoya was November 29, 2015,
21 correct?

22 A. In one of the clips, it was during that
23 controlled meeting, yes.

24 Q. And that controlled meeting is the one
25 where Mr. Montoya recovered a weapon, the Phoenix

1 pistol, the .22 caliber pistol, for the plot, if you
2 will?

3 A. Yes.

4 Q. And that, again, was a very structured
5 moment in the investigation in this case, wasn't it?

6 A. Yes. It was a controlled FBI operation.

7 Q. Correct. And so you're familiar with that
8 date, November 29, 2015?

9 A. Yes, sir.

10 Q. And that was the date that Mr. Montoya
11 picked up the weapon?

12 A. Correct.

13 Q. And that was the date we talked about on
14 your direct, where you instructed Mr. Montoya to
15 discuss with Mr. Garcia the purpose of the weapon?

16 A. Yes.

17 MR. LOWRY: Your Honor, could we play that
18 clip? I believe it's Government's -- is it 238?

19 THE COURT: Is this one of the ones that
20 Mr. Castellano --

21 MR. LOWRY: Yes.

22 THE COURT: -- played this morning? So
23 it's in evidence. You may play it.

24 (Tape played.)

25 BY MR. LOWRY:

1 Q. There is no mention of Gregg Marcantel in
2 that clip, is there?

3 A. No, sir.

4 MS. JACKS: Your Honor, could we ask for a
5 limiting instruction regarding these clips?

6 THE COURT: Yes. This evidence can only
7 be used against Mr. Baca. You can't consider it in
8 your deliberations as to the charges against the
9 other three gentlemen; just as to Mr. Baca, as well
10 as Mr. Acee's comments on the tape here.

11 BY MR. LOWRY:

12 Q. So you testified on direct, and I just
13 want to make sure the jury understands. This audio
14 that we heard is a conversation between Eric Duran,
15 who is Crazo, correct?

16 A. Yes.

17 Q. And Pup, who is Mr. Baca, correct?

18 A. Yes.

19 Q. And the CHS in this case would be Mario
20 Montoya, correct?

21 A. Yes.

22 Q. So it's fair to say, based upon the
23 testimony you gave on direct, that any telephone
24 conversation in this case that the jury is going to
25 hear took place after November 4, 2015?

1 A. My direct with you on Monday, I think
2 that's what we covered, yes.

3 Q. And you agreed with me, based on your text
4 messages with Eric Duran, that's when the telephone
5 conversations started being recorded?

6 A. Yes.

7 Q. And so any time this jury is listening to
8 one of these recordings that involves anybody
9 outside of the facility, that's after November 4,
10 2015?

11 A. If it's on Eric Duran's cellphone, yes.
12 There, of course, were like nine wiretaps, but --

13 Q. Right. Or even if it's on Mario Montoya's
14 phone, like this one?

15 A. In this case, yes.

16 Q. Right. Because Mario Montoya would have
17 to call Eric Duran to get Mr. Baca on the telephone?

18 A. That's true.

19 Q. I mean, he didn't call the STIU Captain,
20 did he?

21 A. No.

22 Q. So I just want the jury to understand that
23 any of these calls, any of the telephone calls with
24 somebody outside of the facility, is after November
25 4th?

1 A. If they're involving Mr. Baca, yes.

2 Q. And I think you would agree with me, Agent
3 Acee, that at one point Mr. Duran actually asked Mr.
4 Baca point blank if he was interested in murdering
5 Mr. Marcantel?

6 A. Early on.

7 Q. And that conversation happened on October
8 24, 2015, didn't it?

9 A. I believe so.

10 Q. Do you need to refresh your recollection
11 with FBI reports?

12 A. No, sir.

13 Q. So you agree with me that that
14 conversation was on October 24, 2015?

15 A. Yes.

16 Q. And once Mr. Baca said he wasn't
17 interested in that, Mr. Duran stopped recording Mr.
18 Baca with the electronic recording device we've
19 referred to as the ELSUR device?

20 A. No.

21 Q. Well, I mean for a period of days?

22 A. I need to look at the records. I'm not
23 sure.

24 Q. Absolutely.

25 MR. LOWRY: May I approach, Your Honor?

1 THE COURT: You may.

2 Q. And it's fair to say the FBI kept
3 meticulous records on the times and dates of the
4 electronic recordings?

5 A. Yes.

6 Q. And based on your review of the recording
7 time signatures after October 24th, Mr. Duran didn't
8 record Mr. Baca again for a period of days?

9 A. I don't think that's right, based on what
10 I saw in the records.

11 Q. Okay.

12 MR. LOWRY: May I approach again, Your
13 Honor?

14 THE COURT: You may.

15 A. It goes on again on the 26th and the 28th.

16 Q. Now, the recording on the 26th was an
17 8-second recording?

18 A. That's correct.

19 Q. And do you remember what that recording
20 was? The recording on the 26th was an 8-second
21 recording.

22 A. Off the top of my head, I think it was
23 just the date; he's recording the date.

24 Q. Right. And that's Mr. Duran, himself,
25 speaking into the microphone, saying "Today's date"?

1 A. Yes.

2 Q. And Mr. Duran said, "Today's date is
3 10/26/2015"?

4 A. Correct.

5 Q. So that wasn't a recording with Mr. Baca,
6 was it?

7 A. It was not.

8 Q. So you would agree with me, then, after
9 Mr. Baca says, "I'm not interested in Mr. Marcantel
10 being murdered," on October 24th. The next
11 recording involving Mr. Baca was October 28, 2015?

12 A. I agree with the second part, just not the
13 first.

14 Q. Would it refresh your recollection to
15 listen to the audio clip?

16 A. No. I remember what Mr. Baca said.

17 Q. Okay. And, in fact, the FBI reports
18 memorializing that conversation indicated that Mr.
19 Baca was not interested in murdering Mr. Marcantel?

20 A. Could you be more specific? Which report?

21 Q. Sure. Do you recall the FBI report -- and
22 in fairness, this was one of your subordinates that
23 you directed to memorialize these conversations and
24 dictate the times, wrote a report that said for the
25 19th phone call, Pup tells CHS to have Mario, Poo

1 Poo, hit Santistevan and/or Adam Vigil, not
2 Marcantel?

3 A. Yes. Thank you. I remember that.

4 Q. And would you agree with me that that
5 phone conversation happened on October 24, 2015?

6 A. Yes, sir.

7 Q. And it happened late in the evening?

8 A. Yes.

9 Q. And after that recording, Mr. Duran didn't
10 record Mr. Baca for a period of almost four days?

11 A. Correct.

12 Q. You touched briefly upon about Mr. Duran
13 once he left New Mexico, and you said once you
14 learned about his legal troubles, you initiated an
15 investigation?

16 A. Yes. Limited, but yes.

17 Q. And I believe you said last week that you
18 had issued search warrants for his Google account,
19 his Facebook account, his telephone accounts?

20 A. When he had went off the rez, yeah.

21 Q. Right.

22 A. When we couldn't locate him, yes.

23 Q. And he wasn't responding to your calls?

24 A. No, for a couple weeks.

25 Q. And he didn't respond to subpoenas to

1 appear in this court, did he?

2 A. Well, in fairness to him, I think the
3 Government accepted it on his behalf.

4 Q. But when you called him to say, "Your
5 presence is requested, you have an RSVP for the New
6 Mexico Federal District Court" --

7 A. Crickets.

8 Q. And the work product of that
9 investigation, the fruits of your search warrant for
10 the Google, the Facebook pages, all of that, that
11 was never shared with defense counsel in this case?

12 A. I don't think so, sir. I think they're
13 sealed. I did do a 302, just to be clear, that I
14 did turn over, describing that I did that.

15 Q. You know, I want to move on from the
16 Marcantel and pick up with the concern with Mr.
17 Urquizo. After looking at your field notes -- well,
18 I've looked at your field notes since the last time
19 you testified. But the agents were confident after
20 his March 6, 2017, debrief that Mr. Baca didn't want
21 Mr. Romero to be killed?

22 A. That's what I recall.

23 Q. Okay. And you drafted a report stating
24 just that?

25 A. Yes.

1 Q. That he wasn't to be killed?

2 A. Or stabbed.

3 Q. Or stabbed?

4 A. Beat up.

5 Q. Roughed up?

6 A. Yes.

7 Q. And so multiple agents that sat with him
8 during the March 6, 2017, debrief wrote the same
9 thing in their notes, didn't they?

10 A. I don't know, sir. I can tell you what --
11 I can represent what's in my notes and my 302. I'd
12 want to look them over. But I'm not sure what the
13 other agents wrote.

14 Q. Sure.

15 MR. LOWRY: May I approach, Your Honor?

16 THE COURT: You may.

17 MR. CASTELLANO: Your Honor, I have no
18 objection to questioning on his notes. I do object
19 to the other notes as hearsay.

20 THE COURT: All right. Let's take them
21 one at a time.

22 BY MR. LOWRY:

23 A. These are my notes, sir, and I think these
24 are Agent Stemo's.

25 Q. And your notes are completely consistent

1 with the conversation you had with Julian Romero,
2 where you told Mr. Romero that Mr. Baca didn't want
3 him hurt too bad, that he didn't want him stabbed,
4 and didn't want him killed.

5 A. Yes.

6 Q. And, in fact, what Mr. Urquizo conveyed to
7 you on March 6, 2017, was that it was the younger
8 guys wanted to remove the older generation?

9 A. That's what I recall, yes.

10 Q. So they could create more room for them to
11 maneuver within the organization?

12 A. Yeah, like a takeover, I guess.

13 Q. And so that's completely inconsistent with
14 Mr. Urquizo's testimony here in court?

15 A. I think he testified that Pup wanted him
16 killed.

17 Q. But that's not what your notes say from
18 your --

19 A. My notes from March 6th say differently,
20 correct.

21 Q. So you would agree with me that based on
22 your initial debrief with him, his statements to you
23 are completely at odds with his testimony before
24 this jury?

25 A. Just that statement regarding Mr. Baca's

1 intention, yes.

2 Q. Correct.

3 MR. LOWRY: May I approach, Your Honor?

4 THE COURT: You may.

5 Q. Now I want to move away from the Romero
6 thing to Javier Molina. And I'd asked you on direct
7 at the beginning of the week if you'd ever attempted
8 to verify any potential for these two gentlemen,
9 being David Calbert and Joe Martinez, Cheech, to be
10 present in the rec yard at the same time?

11 A. You asked me about that, yes.

12 Q. And you indicated -- I asked you why
13 didn't you check the rec yard records, and you said
14 that they rarely, if ever, exist. Or I don't want
15 to put words --

16 A. I said it depends on the officers how well
17 the notes are taken.

18 Q. Did you actually get the notes from the
19 time period in question?

20 A. No.

21 MR. LOWRY: May I approach, Your Honor?

22 THE COURT: You may.

23 Q. In the course of your investigation, did
24 anybody with the Department of Corrections ever
25 share with you rec yard records?

1 A. Yes. I've seen them before, so my answer
2 would be yes.

3 Q. Okay. And do the rec yard records look
4 like what I've handed you, which I can mark for
5 identification purposes as Defendants' Exhibit next
6 in order, GB?

7 A. Yes.

8 Q. And would documents like that fairly and
9 accurately represent what the rec yard records would
10 look like?

11 A. Yes.

12 Q. And those are for PNM North, the housing
13 unit, the housing units there?

14 A. All three of these are for the North.

15 MR. LOWRY: Your Honor, at this time I'd
16 like to move for admission of Defendants' Exhibit
17 GB.

18 THE COURT: Any objection, Mr. Castellano?

19 MR. CASTELLANO: Was that GB?

20 THE COURT: GB.

21 MR. LOWRY: GB.

22 MR. CASTELLANO: May I see the records
23 again, Your Honor? I thought he was just going to
24 refresh him with them.

25 No objection, Your Honor.

1 THE COURT: Anybody else have any
2 objection? Not seeing or hearing anything,
3 Defendants' Exhibit GB will be admitted into
4 evidence.

5 (Defendants' Exhibit GB admitted.)

6 BY MR. LOWRY:

7 Q. And just by way of an example, for the
8 outdoor recreation unit at the PNM North, you would
9 actually have listed the inmate's name over here?

10 A. Yes, sir.

11 Q. And then actually have the Department of
12 Corrections -- this is the inmate number, NMCD
13 number?

14 A. Yes. For that inmate, yes.

15 Q. And that's the number that they carry with
16 them the day they step in the facility as a
17 convicted felon in New Mexico until -- for the rest
18 of their life?

19 A. Yes.

20 Q. And even if they return, they have that
21 same number?

22 A. Yes.

23 Q. And this would actually have the
24 recreational pen, the run that they would be placed
25 inside?

1 A. Yes.

2 Q. And the time they entered it?

3 A. Yes.

4 Q. And the time that they left it?

5 A. Correct.

6 Q. And the officer who took them from their
7 living quarters to the rec yard?

8 A. Yes, sir.

9 Q. And if things were done correctly, you'd
10 be able to document with specificity whether these
11 two individuals were in the rec cage at the same
12 time?

13 A. Or about, yeah. Maybe in passing. But
14 yes.

15 Q. But no such records exist for David
16 Calbert and Joe Martinez in this case?

17 A. That's what Corrections represented to me.

18 Q. Now, Ms. Jacks asked you a little bit on
19 her direct about this meeting that happened between
20 Lupe Urquizo and David Calbert. And it happened
21 where? Was it at the courthouse? The FBI office?

22 A. It was at the FBI office in Albuquerque,
23 in the inmate booking area in our office on the
24 first floor.

25 Q. And that was August 22, 2017?

1 A. Yes.

2 Q. Now, were you present when Mr. Urquizo
3 testified?

4 A. Yes.

5 Q. And you heard the phone conversations,
6 which you commented with Mr. Castellano about the
7 credit he thought he was going to get?

8 A. I think so, yes.

9 Q. And part of that, he was under the
10 impression he was going to get five years off his
11 sentence for lining up other cooperating people to
12 testify or to assist you in this case?

13 A. I recall generally him saying those kinds
14 of things.

15 Q. But was this a false impression on his
16 part?

17 A. To an extent, yeah.

18 Q. And what do you mean "to an extent"?
19 Would he get credit, like he told his family members
20 in the phone call, for signing up other people?

21 A. No. I mean to an extent, because I don't
22 make those decisions, but I certainly pay attention
23 to it. If a cooperator brings in another
24 cooperator, I take note of that.

25 Q. As does everybody involved in the

1 prosecution?

2 A. Yes, sir.

3 Q. And that would be one of the factors both
4 law enforcement, the FBI, and the U.S. Attorney's
5 office would consider when they move for the 5K
6 reduction in the sentence at the end of that
7 particular person's case?

8 A. Yes. And I have represented to them and
9 their attorneys if they call me at a future
10 sentencing, the reason I make note of that kind of
11 stuff is that I'll be prepared to answer questions
12 about it.

13 Q. And testify favorably, or at least
14 participate in their sentencing proceedings in a way
15 that would reflect more beneficially to their final
16 disposition?

17 A. I'll testify honestly about whatever
18 questions I'm asked.

19 Q. And if they were successful in recruiting
20 on behalf of your investigation, they would get
21 credit for that?

22 A. Well, ultimately I guess that's up to the
23 judge, but I believe the United States -- and I
24 don't speak for the attorneys -- but I believe that
25 information could come out and would be favorable.

1 Q. And so when Lupe Urquizo went into that
2 room with David Calbert, he was motivated to
3 convince David Calbert to cooperate?

4 A. I witnessed the initial interaction, and I
5 think that that's fair. He spoke favorably about
6 us, and me personally, and the process. So I agree
7 with you. I just don't know what his attorney told
8 him about the process.

9 Q. And since then, as Ms. Jacks pointed out,
10 they've been housed together for extended durations
11 of time?

12 A. No. They were at different facilities up
13 until the trial started and then -- wait a minute.
14 I just know that Urquizo was held at a different
15 facility for quite some time. He was out at Otero,
16 and I think he testified about that. And as I sit
17 here today, I'm not sure he's -- I'm not sure he's
18 left there. So I may have testified incorrectly to
19 Ms. Jacks. I don't know if they're together right
20 now.

21 Q. But they had ample opportunity, at least
22 on August 22nd, the 23rd, to compare notes?

23 A. If you consider 10 minutes ample
24 opportunity, or their attorneys.

25 Q. It depends on who's keeping the time,

1 according to the testimony?

2 A. I think our times were consistent.

3 Q. You've testified before in this case about
4 this moment when Mr. Urquizo enters the Southern
5 facility, correct?

6 A. I think so.

7 Q. At pretrial hearings?

8 A. I'm sure you'll remind me if I did.

9 Q. And I asked you about it on direct, and
10 you said that there seemed to be a little confusion
11 about that; that you thought maybe you misreported
12 that in your 302?

13 A. Oh, I think I brought that up on Monday
14 and mentioned it again today. Yeah, there's a
15 sentence in there that I was trying to point out on
16 Monday and wasn't able to.

17 Q. And so you think that there was no
18 communication through a window?

19 A. No, I think that there was initially. I
20 think that we're talking about communication at two
21 different places in the facility, and that's where
22 it gets confusing. Because I think there's
23 interaction at two different times and at two
24 different places. And I'll admit, that was hard for
25 me to process when I was first hearing it.

1 Q. Can I pull up Defendants' Exhibit E-10.
2 And do you recognize this at all? This has been
3 admitted into evidence.

4 A. Yes. I've seen this photo a bunch of
5 times.

6 Q. If I represented to you this is the
7 interior of the blue pod, looking at the main door
8 coming in and out of the blue pod?

9 A. That leads out to what we've been calling
10 the horseshoe area.

11 Q. Exactly. So if there is a communication
12 through the window of this, through the front door
13 of blue pod, it would have to be through that
14 window?

15 A. If we're talking about a window, yes.

16 Q. Correct. And apparently in your 302, you
17 were talking about a window?

18 A. At one point, I am.

19 Q. Well, right. You wrote in your 302 that
20 there was communication between Mario Rodriguez and
21 Lupe Urquizo as he entered the Southern facility
22 through a window?

23 A. You'll have to show me the 302.

24 Q. Sure.

25 MR. LOWRY: May I approach, Your Honor?

1 THE COURT: You may.

2 Q. And that's what you wrote in your reports,
3 that they held a note up to the door?

4 A. Yes.

5 Q. But this would be as Mr. Urquizo is
6 getting escorted into the facility from the North?

7 A. I believe so.

8 Q. Now, Mr. Urquizo testified that nobody --
9 for this jury, he said there was no communication
10 through the window?

11 A. You're right. I think he said it went
12 under the door.

13 Q. And could I pull up Defendants' Exhibit
14 E-17. And do you recognize this as the top tier
15 door?

16 A. Yes, sir.

17 Q. And you would agree with me that this tier
18 door doesn't have a window?

19 A. I agree.

20 Q. And you would agree with me that this tier
21 door is virtually identical to the tier door on the
22 lower level?

23 A. Yes.

24 Q. Could we pull up Government's Exhibit 162.
25 And, again, the photo we just looked at would be the

1 tier door that separates the blue pod from the
2 yellow pod, correct?

3 A. Yes, sir.

4 Q. And that tier door is right there?

5 A. It is on both levels.

6 Q. Right. So the 302 apparently -- well, Mr.
7 Urquizo thinks, as of today, that there was no
8 communication through the window?

9 A. I think that's right.

10 Q. And that would, again, be inconsistent
11 with what you believed after your interview with him
12 on March 6, 2017?

13 A. It could be inconsistent with what I
14 understood him to be telling me.

15 Q. And, in fact, in the pretrial hearings in
16 this case, when you testified on November 27, 2017,
17 you testified at length about this conversation that
18 Mr. Urquizo had, apparently had, through a window?

19 A. I testified to what I wrote in my report,
20 yes.

21 Q. Right.

22 A. What I recalled.

23 Q. And that's the testimony that today Mr.
24 Urquizo said never happened?

25 A. No, just one area. There is one point of

1 contention there. It's that sentence at the bottom
2 of the paragraph.

3 Q. But --

4 A. I think I said held up to the door, and he
5 said it went under the door.

6 Q. Right. Well, in November 2017 you
7 testified at length about -- and we went through
8 this on your direct -- that you were under the
9 belief that Mr. Martinez and Mario Rodriguez were
10 out here in the horseshoe, doing maintenance work.

11 A. They were, and I think Mr. Urquizo agrees
12 with that in his testimony, when he was coming into
13 the facility.

14 Q. That they were out here in the horseshoe,
15 doing maintenance work?

16 A. I don't want to represent he said the
17 horseshoe specifically, but from my recollection --
18 and I defer to the Court's record -- but that he
19 testified, which was consistent with my memory and
20 my 302, that he did encounter them coming into the
21 facility.

22 Q. In the horseshoe area?

23 A. I think so.

24 Q. And, in fact, you testified at a pretrial
25 hearing that Mr. Rodriguez and Mr. Martinez were out

1 in the horseshoe area, possibly painting?

2 A. Painting or cleaning or something like
3 that.

4 MR. LOWRY: May I have a brief moment,
5 Your Honor?

6 THE COURT: You may.

7 Q. Now, Mr. Acee, the United States had
8 offered Exhibit 777 in evidence. And I believe
9 you've modified that initial summary, correct?

10 A. Yes, sir, the chart.

11 Q. The chart?

12 A. Yes.

13 Q. Now, in fairness, you've revised this
14 summary chart twice now, have you not?

15 A. On the 27th, and again last night at about
16 10:30 or 11:00 p.m.

17 Q. Now, would you explain to the jury the
18 revisions you did between the first and the second
19 revision? Or do you recall?

20 A. There were a couple of dates that I
21 changed, the date of the debrief. Because I think I
22 found somewhere they were mislabeled, based on when
23 the report was approved, kind of what I would
24 classify as misreads; just that the approval date
25 and the date we write are sometimes different.

1 And then I found a couple additional
2 debriefs that I wanted to include, that weren't on
3 the first one.

4 Q. Okay. And was this a similar revision
5 between the second and the one you produced
6 yesterday?

7 A. Yes. Because yesterday, following Court,
8 I'd been instructed to collect all agent notes
9 related to all those debriefs, so I spent about
10 eight hours at the Las Cruces office, pulling all
11 that up. So then I had additional revisions on the
12 chart based on the time I spent in-depth studying
13 that stuff.

14 Q. And if I understood your testimony last
15 week when this exhibit was conditionally introduced
16 into evidence, the purpose of this summary was sort
17 giving an overview of all of the FBI debriefs that
18 were done in this case?

19 A. For Mr. Castellano. I didn't know we'd be
20 talking about it in here. I was trying provide Mr.
21 Castellano with a summary.

22 Q. But that was the purpose of the summary?

23 A. Yes. It was a little hurried because I
24 thought it was just for him.

25 Q. But your intention was to capture all of

1 the debriefs with the individuals that testified in
2 this case?

3 A. Yes, sir.

4 Q. And while you might not have known that
5 Mr. Castellano was going to make it an exhibit last
6 week, by the time of yesterday you certainly
7 understood that?

8 A. Yeah. I should have written a draft on
9 it.

10 Q. But your goal as of yesterday was to
11 capture everything?

12 A. Yes, sir.

13 Q. Okay. And you obviously had the luxury of
14 having all of your field notes that were just
15 disclosed to the defense this morning?

16 A. No. Many of those were up in Albuquerque.

17 Q. Well, there's no electronic database where
18 you could access those notes?

19 A. No, not necessarily, unless you're saving
20 them electronically, which I don't. I retain my
21 original notes.

22 Q. Between last week and this week, you've
23 been in Albuquerque and have had access to those
24 notes?

25 A. That's fair to say.

1 Q. I'm going to put on the Elmo what's been
2 conditionally entered. This says right here, this
3 was your analysis as of yesterday, March 1, 2018,
4 correct?

5 A. Last night. Yes, sir.

6 Q. And everybody had a long night last night.
7 Now, if I understand your chart correctly,
8 you had six debriefs from Manuel Jacob Armijo,
9 correct?

10 A. Yes.

11 Q. Now, you didn't include in your list the
12 debrief that took place with the arrest, when you
13 had to arrest Mr. Armijo for his drug violation?

14 A. No, this is just debriefs.

15 Q. Did you talk to Mr. Armijo on that day,
16 which was November 16, 2017?

17 A. He's a big guy. I try to keep him happy.
18 But he's got an attorney. So, no, I didn't debrief
19 him.

20 Q. Okay.

21 A. We had some conversation, but not about
22 debriefing.

23 Q. So the FBI 302 that you wrote, indicating
24 that you drove Mr. Armijo to the U.S. courthouse for
25 his initial appearance -- I mean, no actionable

1 information arose during that transport?

2 A. No. I respect the attorney-client
3 privilege. I mean, I'm not going to tell you it was
4 a silent ride. We talked. I think I allowed him to
5 call his wife. But I did not question him about the
6 case, no.

7 Q. And some attorneys will give you authority
8 to do that in their absence, will they not?

9 A. Yes, sir, and his attorney usually prefers
10 to be there.

11 Q. Now, the next line down, for Javier Rubio,
12 you have three entries?

13 A. I do.

14 Q. Correct. And you don't have the entry for
15 the debrief that took place on January 24th of this
16 year?

17 A. Is that the one on the 23rd? Because this
18 might be where I had to change some dates because
19 the reports, the way we interpret them, might be
20 different.

21 Q. Okay.

22 A. So I would want to look at them a little
23 closer. I suspect it's the one on the 23rd.

24 MR. LOWRY: May I approach, Your Honor?

25 THE COURT: You may.

1 Q. Does that refresh your recollection?

2 A. Yes, sir. You need to put the 24th up
3 there.

4 Q. So your third revision let's just say
5 didn't quite capture the correct date, then?

6 A. No.

7 Q. Now, let's move down to Mr. Urquizo.

8 A. I just wonder what the notes say on that
9 one.

10 Q. Do you want to see them?

11 A. No, I'll take your representation. It
12 wouldn't be the first time an agent put the wrong
13 date on the 302, but the notes have the correct
14 date. But I'll concede that I have an error there.

15 Q. Now, Mr. Urquizo. You have five. But
16 your records seem to indicate that when Mr. Urquizo
17 came down to Las Cruces to the district courthouse
18 here, for I guess his initial appearance, that you
19 spent breakfast and maybe a lunch with him?

20 A. Yes, when he was meeting with his
21 attorney. If there's expenses there, that's what
22 they were for. I didn't sit and eat with him, but
23 we bought him food.

24 Q. Right. And your expense report says that
25 there were CHS meal expenses during debrief sessions

1 in support of the captioned matter.

2 A. Okay.

3 Q. So would you consider your meetings with
4 him to be debrief sessions that could be included in
5 this witness summary?

6 A. No. The more accurate document is going
7 to be the 302. This is done two months after the
8 fact, when I get a credit card bill on my undercover
9 credit card.

10 Q. So you didn't debrief with him?

11 A. No, sir.

12 Q. So you just mistakenly wrote in your
13 expense report that these were debrief sessions?

14 A. It's a play on words. I mean, I should
15 have said during -- see, my finance office, it
16 limits what they want to see on our forms.

17 Q. Right.

18 A. So I'm pushing the form through. I'm
19 accurate. I'm being honest with you. We didn't
20 debrief him. I'm getting my credit card paid in the
21 language that my office wants to see on my
22 paperwork.

23 Q. And this was for the breakfast that you
24 had at the Crane Cafe in Lemitar, New Mexico?

25 A. That's a gas station. It's off that exit.

1 I think I got him a breakfast burrito and coffee.
2 We didn't stay and eat. He's in shackles and in the
3 back of an STIU van.

4 Q. And then Rasco's Barbecue on the way home?

5 A. Across the street here. Again, I went in
6 and I ordered, brought his food out to him. He ate
7 it in the back of a Corrections van.

8 Q. But despite the characterization of them
9 being debrief sessions, you didn't debrief him?

10 A. I did not debrief him.

11 Q. Mario Rodriguez. You have on your report
12 four debriefs with Mario Rodriguez. And my review
13 of your records indicates that there was another
14 meeting between you and Mr. Rodriguez on November
15 16, 2017.

16 A. Is that the one at the pen, with Mr.
17 Sanchez, Ron Sanchez?

18 Q. At the North facility in Santa Fe, yes.

19 A. That's not a debrief. That's the meeting
20 with Mr. Sanchez then, Ronald Sanchez.

21 Q. Okay. But Mario Rodriguez was present
22 during that debrief?

23 A. Yes, sir. I recorded it.

24 Q. And that's the debrief when you said, "And
25 you've got to testify truthfully," and Mr. Rodriguez

1 laughed?

2 A. No. First of all, it's not a debrief.

3 Q. Well, the interview, I guess, or the
4 meeting with Ronald Sanchez.

5 A. And somebody said -- I said, "You've got
6 to testify truthfully," and he laughed at me?

7 Q. He laughed at the notion.

8 A. I don't remember that. I don't think it's
9 funny, either.

10 Q. No, it wouldn't be funny, would it?

11 A. No.

12 Q. Yeah. I don't think he laughed.

13 A. I wouldn't support that. Or if I heard
14 that correctly, I wouldn't -- we'd have a
15 confrontation over it.

16 Q. Now, your summary chart doesn't include
17 the December 12, 2017, meeting with Mario Rodriguez.
18 And this is, again, at the PNM North facility with
19 Captain Sergio Sapien and Chris Cupit.

20 A. Yeah, that's not a debrief. The FBI
21 didn't participate in that. That's a meeting that
22 they have with him about institutional security.

23 Q. And so even though there's a 302 written
24 on it with information that was obtained from Mario
25 Rodriguez, you don't consider that a debrief related

1 to this case?

2 A. I don't believe that's true. My
3 understanding of that meeting, what was represented
4 to me, is they were talking to him about lax
5 security at the institution, which doesn't have to
6 do with this case, in my opinion.

7 Q. So you don't think that all of the
8 information we've heard about shanks and the
9 creation of shanks and all the security issues
10 involved in this case was related to this
11 conversation?

12 A. Well, in a roundabout way it is. But they
13 were talking about right here, right now,
14 improvements that need to be made at the facility.
15 I think they even talked about putting a camera on
16 him and having him try escape from a cell or
17 something. but we weren't part of that.

18 Q. Okay. Let's drop down to the next line
19 with Mr. Armenta, Kreaper. You have two debriefs
20 here, but you've testified extensively today about a
21 meeting you had with Mr. Armenta on December 2,
22 2016.

23 A. Was that the one where I was asked if I
24 met with the group?

25 Q. Correct.

1 A. Yes.

2 Q. And that generated a 302 drafted by you?

3 A. It did.

4 Q. So that's not on your list?

5 A. I guess you and me are going to disagree
6 on what a debrief is, then. I asked one question.

7 Q. It was a question related to this case,
8 was it not?

9 A. It was, yes, sir.

10 Q. And it was a question you really wanted to
11 know the answer to, was it not?

12 A. That's accurate. I just don't consider it
13 a debrief.

14 Q. Let explore this. How do you define a
15 debrief? If a debrief isn't obtaining information
16 from an individual, what is it?

17 A. A debrief, we're going to sit down, and
18 their attorneys are going to be there, and we're
19 going to get into the weeds on stuff. We're going
20 to -- they may last hours, where I ask a series of
21 questions and they have long extensive answers. I
22 mean, we're debriefing something. I'm not asking a
23 mere question.

24 Q. Sometimes a single question could bear an
25 answer that you desperately want to know, does it

1 not?

2 A. Sure. But that doesn't make it a debrief.

3 Q. Well, with Mr. Armenta, you also met with
4 Mr. Armenta on the -- let's see. This would be his
5 plea hearing on the 13th of 2016.

6 A. Okay.

7 Q. Would you have debriefed him at the
8 courthouse after that?

9 A. Not if I don't have a 302 saying I -- with
10 a bunch questions and answers, no.

11 Q. Okay.

12 A. Sometimes the attorneys don't have time
13 for us to do it.

14 Q. And so in your mind's eye, a debrief isn't
15 a debrief unless it generates a 302?

16 A. No, that's not true. I think a debrief --
17 in my mind, a debrief is when I sit down with a
18 defendant, a cooperator, whatever, and I sit down
19 and we take out my notebook and we go through a
20 series of questions, debriefing them on what they
21 know.

22 Q. Okay. So if we skip down to Jerry
23 Montoya, you have five sessions here, but you don't
24 include May 16, 2017, when again you expensed
25 chimichangas for what you described in your expense

1 account as food expenses during a debrief session.

2 A. I already explained that. Yes.

3 Q. So you think even though you called it a
4 debrief session, it's not a debrief session?

5 A. On the expense report, yeah, I'm limited
6 in what I can call it to get the bill paid.
7 Otherwise, I'm paying out-of-pocket.

8 Q. So you misrepresent what it is, to get
9 paid?

10 A. No. That's clever. I do what the finance
11 office tells me to put on the form so it gets
12 approved.

13 Q. I'm not trying to be clever. I'm trying
14 to understand what a debrief is.

15 A. I think I've explained it.

16 Q. Well, I mean, it seems to have very
17 mercurial definitions, depending on the
18 circumstances.

19 A. I'll introduce you to our finance people.

20 Q. Let's talk about Julian Romero. You would
21 agree with me that in your initial exhibit, you
22 didn't even include -- if I can find it here.
23 Julian Romero. You didn't even include the trip
24 that you took to the Old Main with him when you
25 recorded him for hours?

1 A. Yes, sir. As I sat here, I didn't have
2 that material in front of me.

3 Q. And so I don't want to belabor this, but
4 the times that you purchased food for Mr. Romero,
5 and Mr. Romero wasn't in custody?

6 A. No.

7 Q. And he didn't have an attorney, did he?

8 A. He did at one time. Because I've arrested
9 him before.

10 Q. Okay. But when you met with him on July
11 16, 2016, to eat, that wasn't a debrief session?

12 A. I'm not sure. But to be clear, Mr. Romero
13 made controlled buys for us on other cases, so we'd
14 have to look at the case number. I'm just not sure.

15 Q. Okay.

16 A. That could be Agent Neale who is using him
17 on another case.

18 Q. And that leads into my next questions.
19 These situations where you're working with Mr.
20 Romero on other cases that generate 302 reports, you
21 don't consider that part of this case to include in
22 your witness summary?

23 A. No. If we're not talking about this case
24 and we're talking about an ongoing case, I certainly
25 don't want to provide that in this for everyone here

1 to see.

2 Q. Well, I mean, you wrote this -- well, it's
3 not a 302, and I think you made a distinction in
4 your earlier testimony the difference between a 1023
5 report and a 302?

6 A. Yes, sir.

7 Q. But many times they're almost identical,
8 the substance of the report, correct?

9 A. Many times we cut and paste from the 302,
10 put it in the 1023, and take the informant's name
11 out of it.

12 Q. Exactly. So substantially, there is not a
13 real difference?

14 A. No. The 1023, you shouldn't see their
15 name.

16 Q. It's a matter of how you file them in the
17 FBI records?

18 A. Yes, sir.

19 Q. But in this report, you indicated that on
20 9/30 of 2016, this was information pertaining to SNM
21 Gang threats?

22 A. I need to look at it.

23 Q. Sure.

24 MR. LOWRY: May I approach, Your Honor?

25 A. I've done a lot of Julian's 1023s.

1 Q. Sure.

2 A. What was the question, sir?

3 Q. This is related to the SNM?

4 A. Yes. I use this material to write search
5 warrants.

6 Q. Right. And so you didn't -- and it was an
7 opportunity for you to spend, or at least the case
8 agents working with you to spend time with
9 Mr. Romero?

10 A. Yes.

11 Q. But yet, you didn't want to include it in
12 your summary of significant exchanges with Mr.
13 Romero?

14 A. Is this different than the May one?

15 Q. Yes, it is.

16 A. Okay. I just noticed that. Okay.

17 Q. Likewise, you met with Mr. Romero on July
18 24, 2017, to discuss activity and that's not
19 included in your witness summary.

20 A. Is that also prep for a search warrant?
21 I'd need to look at it.

22 Q. Sure.

23 MR. LOWRY: May I approach?

24 THE COURT: You may.

25 A. Okay. Yes, this is where he helped me

1 arrest a sex offender who was an SNM member.

2 Q. Now, would you agree with me that it's
3 hard for me to discern or understand what the nature
4 of the reports are, without any field notes to give
5 me some kind of contemporaneous mental impressions
6 of the agents working the case?

7 A. I don't think it's that difficult.

8 Q. You don't? I'm supposed to know that
9 that's to prepare a search warrant?

10 A. That, you should, because it says it in
11 the first sentence. And this one says that I used
12 his information, indicating this gang member was
13 wanted as failure to register as a sex offender, and
14 he told me where he was at, and I did surveillance,
15 and I arrested him.

16 Q. And you did that based on information you
17 obtained from Julian Romero?

18 A. Yes.

19 Q. And Julian Romero assisted you with that?

20 A. Not the arrest, but the information. Mr.
21 Lowry, I don't think it's a debrief.

22 Q. I understand that. But I guess what I'm
23 trying to demonstrate is that in the course of your
24 investigation, there are numerous opportunities for
25 you to get information from the individuals that are

1 cooperating, cooperating with you?

2 A. It's easier if they don't have attorneys,
3 but yes.

4 Q. Right. Even in some instances when they
5 have the attorney, you can call the attorney and
6 say, "Hey, I'm going up to the North. I want to sit
7 down and talk with your client. Is that okay?"

8 A. Yes, and I've done that.

9 Q. And most attorneys, when their client is
10 cooperating with you and you've established a
11 rapport with the attorney and the client over the
12 course of years, correct -- like this case?

13 A. Yes.

14 Q. Many attorneys will just say, "That's
15 fine"?

16 A. Some do. They want to know what the
17 questions are ahead of time.

18 Q. Some, but not all?

19 A. Not all.

20 Q. In fact, some attorneys will let their
21 clients be videotaped in extensive debriefs without
22 even being there?

23 A. If they know about it, yes. I think I
24 know which one you're talking about. I don't know
25 if he knew about it. But in any case, when I go, I

1 ask permission before.

2 Q. Okay. So all of these instances I'm
3 looking at, then, you're more than happy to say,
4 "Look, that's not a debrief," as you've defined it?

5 A. I made the chart, yes. I tried to do it
6 to be helpful. But this isn't a debrief.

7 Q. Okay. But let's be plain about it. You
8 had to revise this chart not once, but twice?

9 A. Yes. And it looks like I need to do it a
10 fourth time.

11 Q. Okay. No, you do need to do it a fourth
12 time.

13 A. Well, you pointed out that I was a day off
14 on one of them.

15 Q. Okay. I guess we're going to agree to
16 disagree, then, on the meaning of a debrief because
17 I think if you're going to ask an individual
18 questions, even if it's a single question about the
19 case, and you're writing a 302 on it, how is that
20 not -- well, I know what you're going to say: It
21 wasn't hours on end.

22 A. No, that's not the only definition. I
23 mean, what we have in front of us here in this
24 exhibit is my historical debriefs of the cooperators
25 pertaining to this case right here. Me arresting a

1 sex offender on the streets is not the same thing.
2 But I also provided this to the defense, so it's not
3 like I just turned it over yesterday.

4 Q. Right.

5 A. I just don't consider it a debrief related
6 to this.

7 Q. Well, let's take Gerald Archuleta, for
8 instance. You don't have the March 18, 2016,
9 meeting with Mr. Archuleta. And on this, you were
10 at the facility with Mark Myers, yourself, Special
11 Agent Thomas Neale, Special Agent Joseph Sainato,
12 and you interviewed Gerald Archuleta about this
13 case?

14 A. May I see that, please?

15 Q. Absolutely. And that document says he was
16 asked about SNM activities.

17 A. That's the first time I've seen that
18 document, but you're correct.

19 Q. Well, you were there.

20 A. It says I was there. This is a Department
21 of Corrections memo.

22 Q. Right.

23 A. I don't believe we have a 302 on this.

24 Q. I don't believe you do either, but it
25 sounds like a debrief.

1 A. I'd agree with you.

2 Q. And on September 20, 2016, you wrote a 302
3 about meeting with Gerald Archuleta when you
4 recovered, I guess, or fetched -- I don't know how
5 you want to describe it -- but some writings he had
6 made about this case?

7 A. Yes.

8 Q. And when you went to engage Mr. Archuleta
9 to recover those writings, it's not on here, but was
10 that a debrief?

11 A. No.

12 Q. It was just a recovery?

13 A. Yes. Did I get it from him or his
14 attorney?

15 Q. It says that Styx provided FBI Special
16 Agent Bryan Acee with a 24-page written statement
17 concerning Archuleta's history in the Sindicato
18 Nuevo Mexico gang.

19 A. Yes. His manifesto, yes.

20 Q. That you encouraged him to write?

21 A. I encouraged all the cooperators to write
22 them.

23 Q. So at the time, did you get to talk to Mr.
24 Archuleta about what he had written?

25 A. No. And I think that staff actually gave

1 it to me. I don't know that I got it from him
2 directly.

3 MR. LOWRY: May I approach, Your Honor?

4 THE COURT: You may.

5 A. Thank you.

6 Q. The 302 doesn't indicate there was anybody
7 but you on that endeavor, does it?

8 A. It just says that he provided it to me at
9 my request.

10 Q. Anybody reading that would have no
11 understanding that there was anybody other than you
12 meeting with Gerald Archuleta on that occasion,
13 would they?

14 A. No, and I'm not representing that there
15 was.

16 Q. So if we drop down on your list to Robert
17 Martinez, it doesn't appear that you have the July
18 1, 2015, debrief with Mr. Martinez on here either?

19 A. What was the date?

20 Q. July 1, 2015.

21 A. I'd have to look at the document. I
22 suspect this may be the June 30th one.

23 Q. Is that just a typo in the report?

24 A. I don't know. I'd want to see the report,
25 because this is a 1023.

1 Q. But that describes a debrief session here
2 in Las Cruces, does it not?

3 A. Yes, sir.

4 Q. And with Eric Duran I noticed -- and we've
5 talk about this repeatedly throughout this
6 litigation -- you left off the August 5, 2015,
7 meeting where you initially met Mr. Duran and took
8 over his case from his former handler with the FBI,
9 correct?

10 A. August 5, 2015, is when I met Mr. Duran.

11 Q. And that generated a series of reports
12 from you?

13 A. On that date.

14 Q. Correct. I mean, there is at least a
15 1023, but that would have generated a 302, would it
16 not have?

17 A. Perhaps. But I believe I did do a 1023.

18 Q. And that would have been a debrief?

19 A. Yes, sir.

20 Q. And that's not on your summary here,
21 correct?

22 A. No, it is not.

23 Q. And we were just handed your field notes.
24 There was a handwritten field note from you, from
25 August 14, 2015, concerning Eric Duran?

1 A. I think there's two.

2 Q. Okay. And Mr. Duran never had an
3 attorney?

4 A. Back then, no.

5 Q. And he referred to you as his attorney?

6 A. I don't know.

7 Q. You don't know he called you his lawyer?

8 A. I don't know what he called me.

9 Q. But these telephone conversations you had
10 with Mr. Duran when you were obtaining information,
11 they weren't debriefs because you weren't
12 face-to-face, sitting down for hours, having lunch?

13 A. No.

14 Q. But you would agree that the August 5,
15 2015, debrief session you did have isn't on here?

16 A. Mr. Lowry, I don't have any excuses. You
17 got me on that one.

18 Q. I'm not trying to get you. I'm just
19 trying to explain to the jury that despite your best
20 efforts, this summary chart is not accurate?

21 A. I'll say it. I make mistakes and I
22 sometimes miss things, as hard as I try not to.

23 Q. You would agree with me it's not accurate?

24 A. I agree with you. I'll make some
25 revisions, and I'm happy to do that as soon as I sit

1 back down, if you like.

2 MR. LOWRY: Your Honor, at this time we'd
3 move to strike Government's Exhibits 777, 777-A, or
4 even 777-B if it's offered.

5 THE COURT: What do you want to do with
6 these charts at this point, Mr. Castellano?

7 MR. CASTELLANO: Make the corrections and
8 move their admission, Your Honor. I think it would
9 be helpful to the jury.

10 MR. LOWRY: Well, Your Honor, we'd ask for
11 time to go through the FBI -- through Mr. Acee's
12 notes, to see. I mean, I think we might be on a
13 semantic disagreement about what a debrief is. But
14 if any of his notes are extensive and indicate an
15 extended conversation that resulted in actionable
16 information in this case, I would characterize that
17 as a debrief. But we might have an honest
18 disagreement about that.

19 THE COURT: Well, I'm not going to admit
20 them at the present time. If we come up with a
21 chart that there is more consensus on, I'll
22 reconsider it. But right at the present time, I
23 won't admit either chart.

24 Mr. Lowry.

25 MR. LOWRY: No further questions, Your

1 Honor.

2 THE COURT: Thank you, Mr. Lowry.

3 Ms. Fox-Young, do you have redirect of Mr.

4 Acee?

5 MS. FOX-YOUNG: Your Honor, I just didn't
6 catch it. What time does the Court intend to take
7 the lunch break?

8 THE COURT: Oh, in about six or seven
9 minutes.

10 MS. FOX-YOUNG: Okay. Thank you, Your
11 Honor.

12 THE COURT: Does that get you started?

13 REDIRECT EXAMINATION

14 BY MS. FOX-YOUNG:

15 Q. Agent Acee, you would agree with me that
16 the nearly 1,000 pages of documents produced on
17 Wednesday from Mario Rodriguez' belongings were
18 written before July of last year, right?

19 A. Yes.

20 Q. And so they were written before Mario
21 Rodriguez testified in this case. You were asked
22 some questions about Mario Rodriguez' understanding
23 about whether he had to register as a sex offender.
24 Do you remember that?

25 A. Yes.

1 Q. And I think you said it was his
2 understanding that he didn't need to, right?

3 A. At one point in time, yes.

4 MS. FOX-YOUNG: Your Honor, may I approach
5 the witness?

6 THE COURT: You may.

7 MS. FOX-YOUNG: Thank you.

8 BY MS. FOX-YOUNG:

9 Q. Agent Acee, do you see here in the
10 writings of Mario Rodriguez where he says, "When I
11 leave from talking to you, before I go see the rest
12 of my family, I'm going to the police station to
13 register as a sex offender"?

14 MR. CASTELLANO: Objection, Your Honor.
15 Counsel is reading the document into the record. It
16 hasn't been introduced.

17 MS. FOX-YOUNG: It's impeachment, Your
18 Honor.

19 THE COURT: Hold on. What?

20 MS. FOX-YOUNG: It's impeachment, Your
21 Honor.

22 THE COURT: What is that document you're
23 having him look at?

24 MS. FOX-YOUNG: This is from the 981
25 pages.

1 THE COURT: What is it?

2 MS. FOX-YOUNG: It's a writing of Mario
3 Rodriguez.

4 THE COURT: And how is that going to
5 impeach Mr. Acee?

6 MS. FOX-YOUNG: Agent Acee said that he
7 believed that Mario Rodriguez did not know that he
8 had to register as a sex offender.

9 THE COURT: And what is this document,
10 though? I'm still not certain I understand what
11 this is.

12 MS. FOX-YOUNG: Well, Your Honor, not
13 having had a chance to authenticate everything that
14 was produced on Wednesday, I can't say who it was
15 written to, but it's a writing of Mario Rodriguez.

16 MR. CASTELLANO: Your Honor, how does she
17 know that? So first of all, foundation. And second
18 of all, if we're going to trade documents, I again
19 move the admission of all documents.

20 THE COURT: Well, let's just, first of
21 all, lay some foundation as to whether he knows this
22 document, has seen it, and what it is. Because I
23 don't want you to get a situation where you're
24 testifying about what it is.

25 MS. FOX-YOUNG: I can do that, Your Honor.

1 THE COURT: No, you can't. You're an
2 attorney, not a witness.

3 MS. FOX-YOUNG: I'll lay some foundation.

4 THE COURT: So you can't testify about it.

5 MS. FOX-YOUNG: I'll lay some foundation.

6 THE COURT: So you're going to have to lay
7 a foundation through Mr. Acee.

8 MS. FOX-YOUNG: Yes, Your Honor.

9 BY MS. FOX-YOUNG:

10 Q. Agent Acee, do you want to just take a
11 look at this document? And you can take your time.
12 It's two pages. If you want to take a look at it
13 before I ask you questions about it?

14 MR. CASTELLANO: Your Honor, I'd also like
15 to see the document beforehand. That wasn't shown
16 to me by counsel.

17 MS. FOX-YOUNG: Yes, Your Honor.

18 MR. CASTELLANO: Thank you, Your Honor.

19 THE COURT: All right. Ms. Fox-Young.

20 BY MS. FOX-YOUNG:

21 Q. All right. Agent Acee, you had a chance
22 to take a look at this document. Do you recognize
23 the handwriting to be that of Mario Rodriguez?

24 A. I think that it is.

25 Q. Okay. And you recall my question to you,

1 then, about whether or not it in fact says something
2 about --

3 MR. CASTELLANO: Objection, Your Honor.
4 Calls for hearsay, and he said he thinks it's his
5 writing. He's not laid the foundation.

6 THE COURT: Well, I think it's sufficient.
7 So these are out-of-court statements being offered
8 to help you determine the credibility of Mr.
9 Rodriguez when he was in the courtroom. So you
10 can't consider it for the truth of the matter; you
11 can only consider it in determining -- making a
12 credibility determination as to Mr. Rodriguez'
13 testimony.

14 Ms. Fox-Young.

15 MS. FOX-YOUNG: Thank you, Your Honor.

16 BY MS. FOX-YOUNG:

17 Q. Agent Acee, I showed you two pages, right?

18 A. Yes.

19 Q. And on both pages, you believe that's the
20 handwriting of Mario Rodriguez?

21 A. I do.

22 Q. And so then on the first page, you saw
23 where it says, "When I leave from talking to you,
24 before I go see the rest of my family, I'm going to
25 the police station to register as a sex offender"?

1 A. I saw that.

2 Q. And then on the next page it talks about
3 how, "I have to go register as a sex offender, and
4 my picture will be next to child molesters and
5 rapists, victimizers of women and children"?

6 You saw that?

7 A. I did see that.

8 Q. Thank you, Agent Acee. And so do you know
9 if, when Mario Rodriguez gets out of the custody, if
10 he's going to have to go register as a sex offender?

11 A. I'm not really familiar with the state
12 law, but it wouldn't surprise me.

13 THE COURT: All right. Ms. Fox-Young,
14 would this be a good time for us to take our lunch
15 break?

16 MS. FOX-YOUNG: Yes, Your Honor.

17 THE COURT: All right. Let me instruct
18 the jury here, because I do want everybody to be
19 very careful here, of a few things that are
20 especially important.

21 Until the trial is completed, you're not
22 to discuss this case with anyone, whether it's
23 members your family, people involved in the trial,
24 or anyone else, and that includes your fellow
25 jurors. If anyone approaches you and tries to

1 discuss the trial with you, please let me know about
2 it immediately.

3 Also, you must not read or listen to any
4 news reports of the trial. Again, don't get on the
5 internet and do any research for purposes of this
6 case.

7 And finally, remember that you must not
8 talk about anything with any person who's involved
9 in the trial, even if it doesn't have anything to do
10 with the trial.

11 If you need to speak with me, simply give
12 a note to one of the court security officers or Ms.
13 Standridge. Again, I may be repeating these this
14 afternoon as we make transitions in this case; but
15 if I don't, do keep them in mind each time we take a
16 break.

17 All right. We'll be in recess for about
18 an hour.

19 (The jury left the courtroom.)

20 THE COURT: All right. We will be in
21 recess for about an hour.

22 (Lunch recess.)

23 THE COURT: All right. Let's go on the
24 record. I received a note right when we were coming
25 in before the last segment from one of the jurors.

1 It's Juror Number 17, Anastasia Wolfe.

2 It says, "Judge Browning, lady in gallery
3 in orange sweater watching me. Have I done
4 something wrong? Anastasia Wolfe."

5 Now, the only person I can see in the back
6 that's had any sort of orange is, I think, the
7 paralegal that sits behind you, Ms. Bhalla. But
8 every time I look at her, she's looking down. So I
9 don't know if there's -- what?

10 MR. VILLA: I'm sorry, Judge. On the
11 bench, this side of the well?

12 THE COURT: Yes.

13 MR. VILLA: That's Ms. Anderson. She's an
14 associate attorney that works with me.

15 THE COURT: That's the only person I've
16 seen back there with any orange on. Have y'all
17 noticed anybody in orange that's been back there?

18 MR. LOWRY: Your Honor, there's a student
19 sitting back here that's doing some criminology
20 paper.

21 THE COURT REPORTER: I can't hear what's
22 going on.

23 THE COURT: Hey, hey. We've got to be on
24 the record. We're on the record, so everybody talk
25 one at a time, and loudly.

1 MR. LOWRY: I don't know her name. I just
2 know she's an student at NMSU, but I don't know what
3 she's wearing.

4 THE COURT: I'm going to ask the marshals
5 or if you want to assign one of the court security
6 officers. If she comes back in, would you just tell
7 her to be a little careful. I'm not trying to tell
8 her what to look at, but don't stare at Juror Number
9 17.

10 I'll tell one war story here. My partner
11 had a case, and I worked on it, but he ended up
12 trying it in front of Judge Burciaga. And K'Aun
13 Wild, as y'all know, I started working with her when
14 she was 18 years old, and she went with him to help
15 him on this case. My partner said, "Keep an eye on
16 the judge. See what he's doing." And so she stared
17 at the judge.

18 Juan Burciaga motioned my partner, Chuck
19 Peifer, "Tell your paralegal to quit looking at me."

20 So fast-forward to -- y'all remember that
21 little Walgreen's? It was downtown for a while.
22 Ms. Wild was walking into Walgreen's, Judge Burciaga
23 was walking out, and he looks at her and he goes,
24 "Those eyes."

25 So I'm going to have Ms. Standridge mark

1 that as exhibit whatever is next in her clerk's
2 minutes. And unless y'all think of something to do,
3 I haven't had that experience before.

4 Let me ask y'all one question as I'm
5 putting these jury instructions together. Since
6 y'all have sort of agreed on this note, instruction
7 number 3 that the defendants have put in, this is
8 the language that I'm a little bit concerned about
9 adding. It says, "Proof beyond a reasonable doubt,
10 therefore, is proof of such a convincing character
11 that you would be willing to rely and act upon it
12 without hesitation in making the most important
13 decisions of your own affairs."

14 My pause about that, and I didn't pull
15 this off the internet; I'm just using my little book
16 here, but I think the comment note is the same. It
17 says, "The Tenth Circuit has repeatedly criticized
18 instructions which define reasonable doubt in terms
19 of substantial doubt combined" -- and I'm quoting
20 here -- "an abiding conviction of the defendant's
21 guilt such as you would be willing to act upon it in
22 the more weighty and important matters relating to
23 your own affairs."

24 And then it gives a long list of Tenth
25 Circuit instructions, including Justice Ginsburg's

1 concurring opinion in Victor versus Nebraska, where
2 she suggested a fundamental difference between
3 decisions people normally make and jury decisions.

4 So I guess I'm pausing a little bit. I
5 know everybody is giving me a green light and are
6 requesting that, but do you really want it? I guess
7 I'm a little surprised the defendants want it
8 because usually I get resistance from the defendants
9 on that type of language.

10 MS. JACKS: It's interesting. I think we
11 talked about that quite while on Saturday. I think
12 we pulled it from the Fifth Circuit instruction.
13 And I don't feel strongly about it. I was unaware
14 of the law in the Tenth Circuit about that.

15 THE COURT: Can I leave that sentence out?
16 Everybody agree to leave it out, just so we don't
17 get into a situation? I'll make all the other
18 changes on that instruction. Everybody agree to
19 leave it out?

20 MS. JACKS: Yes.

21 MR. CASTELLANO: Can you tell us that
22 sentence one more time, please, Your Honor?

23 THE COURT: Do you want the one that the
24 defendants had asked? Or what do you want, Mr.
25 Castellano? What do you want me to read? Are you

1 asking the sentence the defendants want?

2 MR. CASTELLANO: Yes, sir.

3 THE COURT: Okay. This is in their red
4 line version, 1827-1, page 5.

5 It says, "Proof beyond a reasonable doubt,
6 therefore, is proof of such a convincing character
7 that you would be willing to rely and act upon it
8 without hesitation in making the most important
9 decisions of your own affairs."

10 And the sentence that comes up, Tillman, I
11 think it is, Tillman versus Cook, says, "The Tenth
12 Circuit has repeatedly criticized instructions which
13 define reasonable doubt in terms of substantial
14 doubt." We don't have that; you're not asking for
15 that. Combined with, and here's the language that
16 gives me pause, "an abiding conviction of the
17 defendant's guilt such as you would be willing to
18 act upon it in the more weighty and important
19 matters relating to your own affairs."

20 MR.MAYNARD: Your Honor, for Mr. Herrera,
21 I think we prefer -- maybe this is because I'm from
22 the Western District of Texas. I prefer that
23 language from the Fifth Circuit because it
24 communicates more, not just the burden of proof and
25 the reasonable doubt notion, but the seriousness of

1 the decision the jury has to make.

2 THE COURT: Well, what do you think about
3 Ginsburg's criticism of it?

4 MR. MAYNARD: Well, I mean, I don't quite
5 agree with it, and maybe it's again because I'm used
6 to that in the Fifth Circuit.

7 THE COURT: I mean, it always seemed to
8 me, the way the defense lawyers usually protested
9 is, they say: No, this is a more important decision
10 than whether they buy their house or not.

11 And you're free to argue however you want
12 reasonable doubt in your closings, within reason.
13 But I just wonder if a Court ought to be saying,
14 "Think about the most important decision in your
15 life," and then pick one. They might pick a house
16 or a car, maybe they'll pick marriage, or maybe
17 they'll pick a medical decision.

18 I don't know. Let's see a show of hands
19 here. How many people want the language that is in
20 the red line version added? How many of you want to
21 keep it out? All right.

22 Does the Government have a position? Keep
23 it out? You don't care. Looks like it's three to
24 one on the defense side. I'm going to keep it out
25 just because in the Tenth Circuit, I've read enough

1 of those cases, and my experience has been the
2 defense lawyers usually don't like that in there.

3 So I'm going to keep it out at the present
4 time.

5 MS. JACKS: Since we're talking about that
6 instruction, which I guess it's number 3 --

7 THE COURT: Yes.

8 MS. JACKS: -- I think the language that
9 we were probably most concerned about was in the
10 last sentence where it says, "If, on the other hand,
11 you think there's a real possibility they are not
12 guilty."

13 THE COURT: And I've taken that out.

14 MS. JACKS: Okay.

15 THE COURT: The Government seemed to agree
16 with you, so I've taken that out. You'll get a
17 chance to look at it and see how I worded it, but I
18 took that out.

19 MS. FOX-YOUNG: Your Honor?

20 THE COURT: Yeah.

21 MS. FOX-YOUNG: So that I don't do this in
22 front of jury, if the Court would like any argument
23 on it, we had talked about a stipulation on Mario
24 Rodriguez' plea addendum. The Government couldn't
25 find a signed copy.

1 I have some proposed language, and I just
2 would like to work it out if the Government is going
3 to have some objection to it.

4 THE COURT: Okay. Why don't you --

5 MS. FOX-YOUNG: I asked --

6 THE COURT: Why don't you give them a copy
7 and let them look at it, and you can approach at the
8 appropriate time.

9 All rise.

10 (The jury entered the courtroom.)

11 THE COURT: All right. Everyone be
12 seated.

13 All right. Mr. Acee, I'll remind you that
14 you're still under oath.

15 Ms. Fox-Young, if you wish to continue
16 your redirect of Mr. Acee, you may do so at this
17 time.

18 MS. FOX-YOUNG: Thank you, Your Honor.

19 THE COURT: Ms. Fox-Young.

20 BY MS. FOX-YOUNG:

21 Q. Agent Acee, do you recall testifying with
22 the Government about Billy Cordova and the bragging
23 that he did about the Sammy Chavez murder? Do you
24 recall that line of questioning from Mr. Castellano?

25 A. Yes.

1 Q. And it's your testimony, isn't it, that
2 Billy Cordova was in custody at the time that Sammy
3 Chavez was killed?

4 A. Yes.

5 Q. And so you don't believe that he committed
6 that murder?

7 A. Correct.

8 Q. And you recall discussing in front of the
9 jury a couple days ago your testimony about the
10 statements of Freddie Quintana and Sammy Griego,
11 that Billy Cordova had in fact told them that he had
12 bragged to them about committing the murder, right?

13 A. Yes.

14 Q. And you also heard Benjamin Clark's
15 testimony this week along the same lines, right,
16 that Billy Cordova made him believe that he had
17 killed Sammy Chavez, right?

18 A. Yes.

19 Q. And given that you don't believe that
20 Billy Cordova actually did kill Sammy Chavez, those
21 three men all have presented -- or there has been
22 evidence from the statements to those three men that
23 Billy Cordova was in fact bragging about something
24 he didn't do; isn't that right?

25 A. Yes. Each of those men said that Billy

1 told them that, yes.

2 Q. Bragged about a murder he didn't commit?

3 A. I don't think he bragged about a murder he
4 didn't commit. To them, he made it sound like he
5 had committed it. I just don't have enough to prove
6 that he did.

7 Q. All right. Well, let's talk about the
8 Shane Dix homicide. You don't believe that Billy
9 Cordova killed Shane Dix, right?

10 A. No, and I never have.

11 Q. Okay. And how do you know Billy Cordova
12 didn't kill Shane Dix?

13 A. Through my debriefings of Mario Montoya,
14 as well as Christopher Garcia's plea in that and
15 other charges.

16 Q. Okay. So you know it to be true that
17 Billy Cordova did not kill Shane Dix?

18 A. That is what I believe, yes.

19 Q. And you heard the testimony of Benji
20 Montano that Billy Cordova bragged about killing
21 Shane Dix, right?

22 A. Yes.

23 Q. Given your knowledge and belief, that's
24 also an instance where Billy Cordova bragged about a
25 murder he didn't commit, right?

1 A. I guess so. That guy's testimony was a
2 little hard to follow.

3 Q. Agent Acee, since you've been on the stand
4 today, you know that nearly 500 documents have been
5 produced to the defense, and those documents are
6 agent notes from this case?

7 A. I wasn't sure of the count, but we have
8 turned over a lot of documents, yes.

9 Q. And that's the disc that was produced
10 while you were sitting up there?

11 A. Yes.

12 Q. And you looked at a stack? I think Ms.
13 Bhalla showed you a stack of documents that were
14 printed from that disc, right?

15 A. She did.

16 Q. So are you aware whether those documents
17 contain any information that would tell you anything
18 else about Billy Cordova bragging about the murder
19 of Shane Dix?

20 A. Gosh, there's a lot there, as you pointed
21 out, so it's possible.

22 Q. If I showed you a page from those notes
23 with respect to an interview of Eric Duran on August
24 14, 2015, might that refresh your memory?

25 A. Yes.

1 MS. FOX-YOUNG: Your Honor, may I approach
2 the witness?

3 THE COURT: You may.

4 MR. CASTELLANO: Could I see the document,
5 please?

6 MS. FOX-YOUNG: This is Bates 54621.

7 BY MS. FOX-YOUNG:

8 Q. All right. Agent Acee, take a look at
9 this document and see if this refreshes your
10 recollection?

11 A. Yes.

12 Q. Are these your notes, Agent Acee?

13 A. I believe so.

14 Q. And I think you testified, in response to
15 questions from Mr. Lowry, that you did actually -- I
16 think you said it was a telephone debrief, right, on
17 August 14, 2015, that you did with Eric Duran?

18 A. I thought he asked me if there was some
19 notes that didn't have corresponding 302s regarding
20 Duran. I don't know if it was telephonic.

21 Q. I'm just asking, do you recall -- I think
22 this document refreshed your memory. Do you have an
23 independent recollection of talking to Eric Duran on
24 August 14, 2015?

25 A. Not really, but I think that those notes,

1 when you show me those notes, I think that's a good
2 indication that I talked to him.

3 Q. Okay. Because these are your notes?

4 A. Yes.

5 Q. Which were just produced this morning to
6 the defense, right?

7 A. If they're off the disc, yes.

8 Q. And in the course of that conversation
9 with Eric Duran, did you learn something about the
10 Shane Dix murder?

11 A. Yes.

12 Q. Did you learn that Billy Cordova had
13 actually told Eric Duran that he murdered Shane Dix?

14 A. That's what my notes indicate.

15 Q. Any reason to dispute that that's what you
16 learned from Eric Duran?

17 A. No.

18 Q. So wouldn't you say this is another case
19 of another person telling the FBI that Billy Cordova
20 had bragged about a murder he didn't commit?

21 A. I'm not sure how Duran learned it, though,
22 but it's Duran relating to me his take or his
23 opinion on that murder.

24 Q. Eric Duran told you that Billy Cordova
25 bragged to him that he murdered Shane Dix, right?

1 A. I think it says he admitted it, yes.

2 Q. But you know he didn't kill Shane Dix,
3 right?

4 A. Correct.

5 Q. You testified about certain times when you
6 don't trust Billy Cordova. Do you remember that?

7 A. Yes, ma'am.

8 Q. Do you trust Billy Cordova to testify
9 truthfully on the stand, given that he admitted that
10 he testified under oath to Judge Browning on
11 December 12, 2017, that he hadn't used drugs in two
12 years; when in reality, he had used drugs just two
13 weeks before that testimony?

14 A. Yes, I remember that.

15 Q. No, I'm asking if you trust him to testify
16 truthfully, given that he's told this jury that he
17 took the stand and didn't testify truthfully?

18 A. I do.

19 Q. You've never stopped trusting Billy
20 Cordova, have you?

21 A. No, there are some circumstances I don't
22 trust him in, definitely.

23 MS. FOX-YOUNG: Your Honor, no further
24 questions.

25 THE COURT: All right. Thank you, Ms.

1 Fox-Young.

2 Ms. Jacks, do you have redirect?

3 MS. JACKS: Just in a very limited area.

4 THE COURT: All right. Ms. Jacks.

5 REDIRECT EXAMINATION

6 BY MS. JACKS:

7 Q. Agent Acee, I think I just have a few
8 questions on sort of two topics. The first is, Mr.
9 Castellano asked you some questions about this
10 meeting that you had with Mario Rodriguez and Ronald
11 Sanchez. Do you recall those questions?

12 A. I do.

13 Q. That meeting happened after Mario
14 Rodriguez agreed to become a witness for the
15 Government, right?

16 A. Yes.

17 Q. And like other witnesses, other government
18 witnesses in this case, you let Mario Rodriguez know
19 that he might get additional time off his sentence
20 if he was able to bring other people to the table?

21 A. I think we generally talked about that
22 sort of thing, yes.

23 Q. And what happened was, at the time he was
24 housed at the Penitentiary of New Mexico, right?

25 A. Yes.

1 Q. And another person that was in his pod
2 happened to be Ronald Sanchez?

3 A. Correct.

4 Q. And so after Mario Rodriguez signed up to
5 become a government witness, he began talking with
6 Ronald Sanchez, trying to get him to get his brother
7 to somehow strike a deal to become a government
8 witness?

9 A. I know that they were talking. I don't
10 know all the background of it.

11 Q. Wasn't it Mario Rodriguez that contacted
12 you and let you know that Ronald Sanchez was willing
13 to meet with the FBI?

14 A. That wanted to meet with the FBI. Yes, he
15 called me.

16 Q. Mr. Rodriguez called you?

17 A. Yes.

18 Q. So the meeting was really arranged through
19 Mr. Rodriguez?

20 A. Yes.

21 Q. And so that meeting -- well, the fact --
22 let me just go back. There was something in it for
23 Mario Rodriguez to set up that meeting with you and
24 Ronald Sanchez, potentially?

25 A. Potentially.

1 Q. The other topic I wanted to talk to you
2 about was the interviews of Billy Cordova. And
3 specifically, Mr. Castellano asked you about an
4 interview with Billy Cordova on January 24, 2018.
5 Do you recall those questions?

6 A. I think so.

7 Q. Well, he asked you about what Mr. Cordova
8 said about Mr. Sanchez asking for a fierro or a
9 knife?

10 A. Oh, yes.

11 Q. On that particular day, January 24, 2018?

12 A. I do remember.

13 Q. Did you interview Mr. Cordova on that day?

14 A. I'd have to look at the 302.

15 Q. Okay. You don't have any personal or
16 independent recollection that you actually spoke
17 with him on that day, do you?

18 A. We did a lot of interviews that day. I'm
19 not sure, ma'am.

20 Q. Do you think if you saw a 302, that would
21 refresh your memory as to whether you participated
22 in that interview?

23 A. Yes.

24 MS. JACKS: Your Honor, I'm holding a 302
25 regarding a January 24, 2018, interview with Billy

1 Cordova, Bates stamped 51473. May I approach the
2 witness?

3 THE COURT: You may.

4 BY MS. JACKS:

5 Q. Just let me know when you're done.

6 A. Thank you.

7 Q. So the question, I think, that's pending
8 is: Did you interview Billy Cordova on that day,
9 which is January 24, 2018?

10 A. No.

11 Q. You didn't?

12 A. No.

13 Q. So you don't know what he said on that
14 day?

15 A. That's not true.

16 Q. Let me go back. You did not personally
17 hear what he had to say that day?

18 A. I did at times, yes.

19 Q. I'm sorry?

20 A. I did at times, yes. I spent quite a bit
21 of time in the room with him.

22 Q. I thought the question was: Were you
23 present during that interview?

24 A. Did I say I wasn't? I didn't think I said
25 I wasn't.

1 Q. Maybe I jumped ahead. Did you write the
2 302?

3 A. No. Thomas Neale did.

4 Q. Okay. And according to the 302, who was
5 present during the interview of Mr. Cordova on
6 January 24, 2018?

7 A. Mr. Cordova, his attorney, AUSA Randy
8 Castellano, and the FBI personnel.

9 Q. Okay. So were you -- so FBI personnel.
10 That could be you?

11 A. Well, it was primarily Mr. Neale, but I
12 spent a lot of time in there with Cordova. We were
13 at the office all day, and different cooperators
14 were coming in, and I met with each of them.

15 Q. So the 302 that you just looked at, that's
16 less than a page long, right?

17 A. Yes, ma'am, about a half a page.

18 Q. It's about half a page? And were you
19 present when Mr. Cordova was asked questions
20 specifically about what Daniel Sanchez said or asked
21 him about getting a fierro or a shank?

22 A. I don't have independent recollection of
23 that, no.

24 MS. JACKS: So, Your Honor, at this point
25 I would move to strike that testimony. It appears

1 to be hearsay.

2 THE COURT: Well --

3 MS. JACKS: The questions that Mr.
4 Castellano asked Agent Acee about that statement.

5 THE COURT: Do you have any thoughts, Mr.
6 Castellano? If it's all based on something else --

7 MR. CASTELLANO: He said he was aware of
8 the correction to Billy Cordova's statement. He
9 didn't say how.

10 MS. JACKS: Well, counsel elicited that
11 with a leading question to this agent, and he did it
12 knowing full well this agent didn't write the
13 report.

14 THE COURT: Let's do this. Let me give
15 Mr. Castellano a chance to voir dire the witness on
16 this point, and if he doesn't establish that he has
17 any evidence for this other than hearsay, then I'll
18 strike the testimony.

19 Mr. Castellano.

20 VOIR DIRE EXAMINATION

21 BY MR. CASTELLANO:

22 Q. Agent Acee, were you present when people
23 were being interviewed in preparation for a trial in
24 this case?

25 A. Yes, sir.

1 Q. And did that include January 24th of 2018?

2 A. I was.

3 Q. And were you present at a time or times
4 when Billy Cordova was giving statements about the
5 case?

6 A. Yes.

7 Q. And were those additional statements,
8 because it's only one page, statements that provided
9 new information?

10 A. Yes.

11 Q. And are you aware of whether or not he
12 corrected his prior statement from a month earlier,
13 indicating that the shanks were -- that Daniel
14 Sanchez asked for the shanks on or about March 6th
15 or 7th?

16 MS. JACKS: Objection, Your Honor. The
17 way Mr. Castellano is asking the question, it
18 permits an answer based on hearsay, and that's
19 exactly the objection that I'm making. The issue is
20 whether Mr. Cordova told him and he has a
21 recollection of that.

22 THE COURT: I think that's the question I
23 need to hear, so do formulate your question along
24 those lines.

25 MR. CASTELLANO: I'll get right to it,

1 Your Honor.

2 BY MR. CASTELLANO:

3 Q. Do you remember Billy Cordova making that
4 statement on that day?

5 A. I talked to him about it, but I think it
6 was after the fact.

7 Q. So when you say you talked to him about
8 it, did he convey that information to you on that
9 day or at some point close in time when he shared
10 that information with you?

11 A. It was the same day.

12 MR. CASTELLANO: I don't have any other
13 questions, Your Honor.

14 THE COURT: All right. Thank you, Mr.
15 Castellano.

16 MS. JACKS: I have a few follow-ups.

17 THE COURT: Ms. Jacks.

18 CONTINUED REDIRECT EXAMINATION

19 BY MS. JACKS:

20 Q. So when I asked you a few minutes ago
21 about whether you had a recollection of Mr. Cordova
22 saying that, you said you didn't?

23 A. I thought you said it in context to the
24 debrief with the attorneys. I'm sorry if I
25 misunderstood you.

1 Q. So your testimony is that you talked to
2 Mr. Cordova about that statement?

3 A. Yes.

4 Q. And you would agree that the statement was
5 inconsistent with what he told you approximately a
6 month prior?

7 A. He reduced the number of days.

8 Q. Right. He originally said that Mr.
9 Sanchez asked him for a fierro or shank about a week
10 prior to Mr. Urquizo arriving at Southern, right?

11 A. Yes.

12 Q. And then right before trial, he changed it
13 up and said it was either the day before or the day
14 of the Molina homicide?

15 A. He remembered it being closer to the
16 homicide.

17 Q. He remembered it when he was -- in January
18 of 2018, he made the date after Mr. Urquizo got to
19 Southern New Mexico Correctional Facility, right?

20 A. Yes. He provided a shorter timeline on
21 when that incident took place.

22 Q. And do you know what other cooperators Mr.
23 Urquizo had access to in the time period prior to
24 trial?

25 A. I think the only other cooperator at the

1 facility he was at was Mario Montoya. They were at
2 Otero.

3 Q. At the time that this interview took place
4 in January of 2018?

5 A. In January of 2018 I think he was still at
6 the North, at PNM.

7 Q. So he was still housed in Santa Fe?

8 A. You know, ma'am, I'd have to go back and
9 check some records. He went from Santa Fe to Otero,
10 and then I think he went back to Santa Fe.

11 Q. So I guess that --

12 A. I'm trying to remember what color he was
13 wearing when he was here.

14 Q. I guess the answer to my question, then,
15 is that you really don't know?

16 A. I'm not positive, no.

17 Q. All right.

18 MS. JACKS: Thank you. I have nothing
19 further.

20 THE COURT: Thank you, Ms. Jacks.

21 All right. Did you have something
22 further, Mr. Castellano?

23 MR. CASTELLANO: Yes, Your Honor.

24

25

1 FURTHER CROSS-EXAMINATION

2 BY MR. CASTELLANO:

3 Q. Agent Acee, for starters, Exhibit 777.
4 I'm sorry, but I also want to let you know that you
5 misspelled Marijuano's name, so that would be
6 another correction for you. I just wanted to point
7 that out to you, if that helps.

8 A. Thank you.

9 Q. You're welcome. You were asked about this
10 document 54621, a telephone statement regarding Eric
11 Duran?

12 A. Yes.

13 Q. There's an arrow on here. I want to make
14 sure I understand your notes.

15 MR. CASTELLANO: May I approach the
16 witness, Your Honor?

17 THE COURT: You may.

18 BY MR. CASTELLANO:

19 Q. It's kind of cryptic. It's one page. I
20 just want to ask you, because there's an arrow on
21 there pointing to another person, what you recall
22 about those notes or that statement?

23 MS. FOX-YOUNG: Your Honor, I think this
24 is beyond the scope.

25 THE COURT: How do you tie it to the scope

1 of the redirect?

2 MR. CASTELLANO: This is the statement
3 that was shown to Agent Acee just a moment ago, Your
4 Honor. It's the exact same document.

5 MS. FOX-YOUNG: Your Honor, may we
6 approach?

7 THE COURT: By Ms. Fox-Young?

8 MR. CASTELLANO: I believe so.

9 THE COURT: All right. You may.

10 (The following proceedings were held at
11 the bench.)

12 MS. FOX-YOUNG: Your Honor, I'd just ask
13 that the Government not go beyond the questioning
14 about the Shane Dix homicide and Billy Cordova's
15 involvement in it. I don't know what else they want
16 to ask about this document. I don't think it's the
17 proper time to elicit hearsay. The only questions I
18 asked were: Did you learn from Eric Duran that
19 Billy Cordova admitted or bragged about the Shane
20 Dix homicide?

21 THE COURT: What are you going to ask?

22 MR. CASTELLANO: I'm trying to clarify.
23 It's not clear from the note. I'm asking about what
24 the arrow means.

25 THE COURT: I think that's fair game.

1 MS. FOX-YOUNG: I do too, Judge.

2 (The following proceedings were held in
3 open court.)

4 THE COURT: All right. Mr. Castellano.

5 MR. CASTELLANO: Thank you, Your Honor.

6 BY MR. CASTELLANO:

7 Q. I just want to make sure we're
8 understanding your note there, because there is an
9 arrow pointing to something else, and I wasn't sure
10 if you recall what the source of the information was
11 or how that came about?

12 A. I believe the source of that information
13 is Eric Duran, because I've labeled the top of the
14 paper with that, and then the date. And then it
15 appears as though Mr. Duran is giving me information
16 about the Shane Dix murder, and he lists three
17 people in a street gang as being involved in it.

18 Q. So --

19 A. Excuse me. Four people in a street gang.

20 Q. So that was the information that he had or
21 believed, and he provided that to you?

22 A. Yes.

23 Q. So on that occasion, Eric Duran is
24 providing information which may be helpful to the
25 FBI?

1 A. Yes.

2 Q. And did he know whether it's true or not,
3 or was he just conveying something to you that might
4 help you further any part of investigation?

5 A. In my investigation, I was trying to find
6 out. That was one of the homicides I was working
7 on, so just about everybody I talked to I asked
8 about that particular homicide because it was an
9 unsolved homicide.

10 MR. CASTELLANO: May I retrieve the
11 exhibit, Your Honor, the document?

12 THE COURT: You may.

13 BY MR. CASTELLANO:

14 Q. I just want to clarify this with you. On
15 the statement that Urquizo, Lupe Urquizo talked to
16 you about when it came to on the door or over the
17 door, was it your understanding from him that Mario
18 Rodriguez and Timothy Martinez were out doing
19 cleaning?

20 A. Yes.

21 Q. And at that point, whenever they're out,
22 are they outside of their pod?

23 MS. JACKS: Objection, calls for
24 speculation. I mean, Agent Acee wasn't there.

25 THE COURT: Well --

1 MS. JACKS: And there is no testimony from
2 the witnesses that they were cleaning outside the
3 pod.

4 THE COURT: Well, there was some
5 testimony.

6 MR. CASTELLANO: Correct, Your Honor.

7 THE COURT: But the testimony was by whom?

8 MR. CASTELLANO: Well, I'm trying to
9 clarify how Lupe Urquizo relayed this information
10 about how these people were able to communicate.

11 THE COURT: So as long as he's just
12 limited to what Mr. Castellano is probing, what
13 exactly was told to Mr. Acee, then I'll allow that.

14 MS. JACKS: Your Honor, I'd ask that the
15 questions be phrased in that manner, rather than,
16 "What was your understanding?" Or "What actually
17 happened?"

18 MR. CASTELLANO: I'm fine with that, Your
19 Honor. That's fair.

20 THE COURT: That's fair.

21 BY MR. CASTELLANO:

22 Q. Okay. So what did he tell you about Red
23 and Blue in terms of where they were? Were they out
24 of the pod? How is it they were able to
25 communicate?

1 A. They were out of the pod, cleaning or
2 painting.

3 Q. And have you experienced that yourself
4 with inmates who are out of their pods, painting and
5 cleaning?

6 A. Yes.

7 Q. Who do you remember seeing out of the pod?

8 MS. JACKS: Objection, vague as to time,
9 and irrelevant.

10 THE COURT: Overruled.

11 A. Yeah, it happens frequently when I'm up at
12 the North or South. Sometimes some of the inmates
13 that I've gotten to know yell, and they're out
14 cleaning, and they want to talk to me from across
15 the prison grounds or something. Sometimes they're
16 closer to me.

17 BY MR. CASTELLANO:

18 Q. And do you know, when Red and Blue were
19 out of the pod, meaning Rodriguez and Martinez,
20 whether they were porters or not?

21 MS. JACKS: Objection to the phrasing of
22 the question. The issue is what Mr. Urquizo said,
23 not what Agent Acee knows about Red and Blue being
24 out of the pod.

25 THE COURT: Are you willing to tie it

1 directly to what Mr. Urquizo said?

2 MR. CASTELLANO: Sure. Yes, sir, that's
3 fine.

4 BY MR. CASTELLANO:

5 Q. From his statement, do you know whether he
6 was communicating to you -- did he tell you whether
7 they were out because they were porters or why they
8 were out, doing cleaning or painting?

9 A. Because they were on a work detail, which
10 would mean they were porters.

11 MR. CASTELLANO: May I have a moment?

12 THE COURT: You may.

13 MR. CASTELLANO: Thank you, Your Honor. I
14 pass the witness.

15 THE COURT: All right. Thank you, Mr.
16 Castellano.

17 Ms. Fox-Young, do you have further
18 redirect?

19 MS. FOX-YOUNG: Just very briefly, Your
20 Honor.

21 FURTHER REDIRECT EXAMINATION

22 BY MS. FOX-YOUNG:

23 Q. Agent Acee, with respect to what you
24 learned from Eric Duran on August 14, 2015, I think
25 you just testified that you learned that three

1 people in a street gang were apparently involved in
2 the murder of Shane Dix, right?

3 A. I think four people in a street gang.

4 Q. Okay. And that fourth person who Eric
5 Duran told you about was Billy Cordova, who admitted
6 to the murder to Eric Duran, correct?

7 A. Yes.

8 Q. And if in fact Billy Cordova did not
9 murder Shane Dix, that is bragging about something
10 that he didn't do, isn't it?

11 A. He bragged about it, yes.

12 MS. FOX-YOUNG: Thank you, Your Honor.

13 THE COURT: Thank you, Ms. Fox-Young.

14 Ms. Jacks, do you have anything further?

15 MS. JACKS: Just briefly, Your Honor.

16 THE COURT: Ms. Jacks.

17 FURTHER REDIRECT EXAMINATION

18 BY MS. JACKS:

19 Q. Agent Acee, is it your testimony that Lupe
20 Urquizo told you that Mario Rodriguez and Timothy
21 Martinez were porters in blue pod?

22 A. No.

23 Q. Do you have any independent verification
24 of the assertion that they were porters?

25 A. No.

1 Q. And Timothy Martinez, he worked in the
2 wheelchair program, right, if you know?

3 A. At some point in time he did. Timothy
4 told me that.

5 MS. JACKS: I have nothing further.

6 THE COURT: Thank you, Ms. Jacks.

7 All right. Mr. Acee, you may step down.
8 Thank you for your testimony.

9 Let me see counsel up here at the bench.

10 (The following proceedings were held at
11 the bench.)

12 THE COURT: I know that for a long time
13 y'all have wanted Mr. Acee to be your last witness.
14 Looking at the defendants here, is that still where
15 you are?

16 MS. JACKS: When we made that deal, that
17 was before the Government had provided these notes
18 from Agent Sainato that we were questioning him
19 about yesterday, and I would propose to call him now
20 to question him on those notes.

21 THE COURT: Okay. Any objection to that?

22 MR. BECK: No.

23 THE COURT: Okay.

24 (The following proceedings were held in
25 open court.)

1 THE COURT: Is somebody telling the
2 witness?

3 MS. FOX-YOUNG: Your Honor, we'll call FBI
4 Agent Sainato.

5 THE COURT: Mr. Sainato, if you'll come up
6 and stand next to the witness box on my right, your
7 left, before you're seated, my courtroom deputy,
8 Ms. Standridge, will swear you in.

9 JOSEPH SAINATO,
10 after having been first duly sworn under oath,
11 was questioned, and testified as follows:

12 THE CLERK: Please be seated. State and
13 spell your name for the record.

14 THE WITNESS: My name is Joseph Sainato,
15 J-O-S-E-P-H, Sainato, S-A-I-N-A-T-O.

16 REDIRECT EXAMINATION

17 BY MS. JACKS:

18 Q. Good afternoon, Agent Sainato.

19 A. Good afternoon, Ms. Jacks.

20 Q. Can you tell the jury how you're employed?

21 A. I'm a Special Agent for the FBI.

22 Q. And how long have you been an FBI Special
23 Agent?

24 A. I started the Academy in February of 2015,
25 so about three years.

1 Q. And were you assigned to assist in the
2 FBI's investigation on this particular case?

3 A. Yes, ma'am.

4 Q. And as part of your job, in helping out
5 with this case, did you participate in an interview
6 with Lupe Urquizo?

7 A. Yes, ma'am.

8 Q. On -- and let me give you the date. On
9 January 22, 2018?

10 A. Yes, ma'am.

11 MS. JACKS: Your Honor, I have --

12 Q. And did you also take notes?

13 A. I did.

14 Q. And can you tell us how you took notes
15 during the interview?

16 A. This was the pretrial interview for Mr.
17 Urquizo, so I had my laptop and I was taking notes
18 on my laptop.

19 Q. And you were taking the notes
20 contemporaneously with the discussion with Mr.
21 Urquizo?

22 A. Yes, ma'am.

23 Q. And you were typing things out in your
24 notes as they were said?

25 A. Correct.

1 Q. And you've had a chance to -- let me do
2 this. I'm going to mark the FBI 302 and your notes
3 just in case you need to refer to it during your
4 testimony.

5 A. Thank you, ma'am.

6 MS. JACKS: So can we have the defense
7 next in order? Your Honor, I'm going to mark the
8 FBI 302 GC, G as in Good, C as in Charlie. And I'll
9 mark -- that's a one-page document, and I'll mark
10 the four pages of Agent Sainato's notes GD, G as in
11 Good, D as in Dog.

12 And, Your Honor, may I approach and give
13 these to the witness?

14 THE COURT: You may.

15 BY MS. JACKS:

16 Q. Now, Agent Sainato, if you need to refresh
17 your memory, just let me know, and I'll give you the
18 time and try to direct you to the area of those
19 documents you might need.

20 A. Thank you.

21 Q. But first of all, did you prepare the
22 official 302, the FBI report of the interview?

23 A. No, ma'am.

24 Q. Who prepared that?

25 A. Agent Stemo.

1 Q. And did Agent Stemo participate in the
2 interview with Lupe Urquizo on that day?

3 A. She did not.

4 Q. So can you just -- is that normal, or is
5 it unusual to have that happen?

6 A. That's not our normal procedure. It was
7 an extraneous circumstance.

8 Q. So how did Agent Stemo prepare the 302, if
9 she didn't participate in the interview?

10 A. I sent Ms. Stemo my notes.

11 Q. So you emailed them to her?

12 A. Yes, ma'am.

13 Q. Now, I want to ask you some questions
14 about what Mr. Urquizo told you during the course of
15 that interview.

16 A. Yes, ma'am.

17 Q. And if you need to refer to your notes,
18 that's fine.

19 A. Okay.

20 Q. You'd agree with me that the 302 is
21 significantly shorter than your notes, right?

22 A. That's correct.

23 Q. There's a lot of information contained in
24 your notes that is not contained in the 302?

25 A. Yes, ma'am.

1 Q. And the notes that we're discussing, those
2 were provided to me on Wednesday evening, February
3 28th, at about 7:15 in the evening?

4 A. I have no idea when you got them, ma'am.

5 Q. Okay.

6 MS. JACKS: Your Honor, I'd offer a
7 stipulation, then, with the Government that those
8 notes were emailed to me Wednesday, February 28th,
9 at approximately 1915 hours.

10 THE COURT: Is that going to be you, Ms.
11 Armijo?

12 MS. ARMIJO: Yes, Your Honor. I would say
13 evening. Without looking at the email, I don't want
14 to give an exact time, but I can certainly check my
15 emails to see, to verify. But right now, I don't
16 have that in front of me. But would I say evening.

17 THE COURT: Is that all right?

18 MS. JACKS: That's fine.

19 THE COURT: All right.

20 BY MS. JACKS:

21 Q. So, Agent Sainato, I want to ask you just
22 a few questions about what Mr. Urquizo said during
23 that pretrial meeting that you were essentially
24 transcribing.

25 A. Okay.

1 Q. So during that meeting, was it discussed
2 with Mr. -- was the Molina homicide discussed with
3 Mr. Urquizo?

4 A. Yes, it was.

5 Q. And did he tell you that just prior to the
6 Molina homicide, the day prior, he was transferred
7 to Southern New Mexico Correctional Facility?

8 A. Yes.

9 Q. I saw you sort of looking in the air.

10 A. Can I check my notes real quick?

11 Q. Yes, I want you to. And I think it would
12 be at Bates page 54287, which is page 3 of your
13 notes, and it would be the --

14 A. Third to last?

15 Q. Yes, third to last paragraph.

16 A. Yes, ma'am.

17 Q. Okay. And did he tell you -- did he tell
18 you when he got to Southern New Mexico Correctional
19 Facility there was no property officer on duty?

20 A. That's correct.

21 Q. And did he tell you that as he was being
22 escorted to his unit -- well, did he tell you he was
23 placed in yellow pod?

24 A. Let me just double-check that real quick.
25 I'm sorry.

1 Q. I think it's in the same paragraph you
2 were just looking at.

3 A. Thank you. Yes, ma'am.

4 Q. So did he tell you that he was escorted to
5 yellow pod, where he was to be housed?

6 A. He did.

7 Q. And did he say anything happened on the
8 way to yellow pod?

9 A. He said he passed the door to blue pod.

10 Q. Okay.

11 A. That's where he encountered three
12 individuals.

13 Q. And who were the three individuals that he
14 encountered?

15 A. I believe it was Mario Rodriguez, Timothy
16 Martinez, and I'm going to have to check on the
17 third. I'm sorry.

18 Q. Okay.

19 A. Jerry Montoya.

20 Q. And did he tell you that he spoke to them
21 at that time, as he passed blue pod?

22 A. I believe so, yes.

23 Q. And did he tell you anything about Mario
24 Rodriguez later passing him a note under the door
25 between blue pod and yellow pod?

1 A. I'd have to double-check on that, as well.

2 I'm sorry.

3 Q. Okay.

4 A. Thank you. Yes, ma'am, he did.

5 Q. And did he tell you that the note that
6 Rodriguez passed him was asking about paperwork on
7 Javier Molina?

8 A. I'm sorry? One more time. Thank you.
9 Yes, ma'am, he did.

10 Q. And in the note, did the note say anything
11 about Rodriguez's desire to have certain people move
12 on or hit Javier Molina?

13 A. I believe it did.

14 Q. Do you want to double-check?

15 A. I'll do that for you. Yes, ma'am.

16 Q. What did it say?

17 A. The note said that Mr. Rodriguez desired
18 to have Timothy Martinez, Jerry Montoya, and Jerry
19 Armenta do the hit.

20 Q. So the note that Rodriguez wrote said that
21 Rodriguez wanted to have Timothy Martinez, Jerry
22 Montoya, and Jerry Armenta do the hit?

23 A. Yes, ma'am.

24 Q. On Javier Molina?

25 A. Yes.

1 Q. Sometime the next day -- so this would be
2 the day that Mr. Molina was killed -- did Mario
3 Rodriguez send Mr. Urquizo another note?

4 A. Let me refer to my notes, please.

5 Q. I think this is in the last paragraph on
6 that same page.

7 A. Thank you. Yes, ma'am.

8 Q. And according to that note, did Mr.
9 Rodriguez communicate to Mr. Urquizo that Jerry
10 Montoya, Jerry Armenta, and Timothy Martinez were
11 going to be tasked with participating in the
12 homicide?

13 A. Yes, ma'am.

14 Q. And did the note also say that Daniel
15 Sanchez was assigned the task of covering the
16 camera?

17 A. I believe so, but let me double-check real
18 quick.

19 Q. Of course.

20 A. Thank you. Yes, ma'am, he did.

21 Q. During that same interview, did Lupe
22 Urquizo discuss things that happened after Mr.
23 Molina was murdered?

24 A. Yes.

25 Q. And did he tell you specifically that he,

1 Lupe Urquizo, Mario Rodriguez, David Calbert, Robert
2 Martinez, and Roy Martinez discussed hitting or
3 killing Daniel Sanchez after the Molina murder?

4 MS. ARMIJO: Your Honor, at this time
5 we're going to object. This is not impeaching
6 anybody. This is just pure hearsay.

7 THE COURT: Who would it be impeaching,
8 Ms. Jacks?

9 MS. JACKS: Well, Your Honor, this was
10 evidence that was withheld from us until Wednesday
11 night, so it was my understanding that this was at
12 least some bit of a remedy that the Court was
13 permitting because the Government withheld this
14 evidence.

15 THE COURT: Well, I think we've still got
16 to conduct it pursuant to the Rules of Evidence, so
17 if it's not impeaching --

18 MS. JACKS: Well, it does impeach Mr.
19 Urquizo because, if I may, this statement is that --
20 this statement involves wanting to kill Mr. Sanchez
21 for two reasons.

22 MS. ARMIJO: Your Honor, may we approach
23 instead of just blurting out what she thought before
24 the jury?

25 THE COURT: All right. Why don't you

1 approach.

2 MS. JACKS: Well, it should be brought
3 before the jury, and it should have been brought --

4 THE COURT: Let's approach.

5 (The following proceedings were held at
6 the bench.)

7 THE COURT: Is there any way, if it's only
8 going to impeach the witnesses, you can ask your
9 question limited to that one person, rather than
10 listing out all the other people where we don't have
11 statements that it would impeach?

12 MS. JACKS: I can do that.

13 THE COURT: Any issue with that, Ms.
14 Armijo?

15 MS. ARMIJO: Well, it depends on who
16 they're going to impeach.

17 THE COURT: Give the name again.

18 MS. JACKS: Mr. Urquizo, because Mr.
19 Urquizo said that the reason they wanted to hit
20 Daniel Sanchez was because he didn't cover the
21 cameras. And according to this statement, which we
22 didn't have at the time, Mr. Urquizo testified he
23 said it was for two reasons; one, because Sanchez
24 didn't participate in the homicide, and, two,
25 because he didn't cover the cameras.

1 MS. ARMIJO: And that goes straight to --
2 they had the opportunity to call Mr. Urquizo to do
3 that, and they chose not to.

4 THE COURT: Well, I still think they can
5 impeach Urquizo through this witness if that's a
6 statement that was made to or in front of Mr.
7 Sainato. So I'll allow that impeachment.

8 MS. BHALLA: I don't have any problem with
9 Ms. Jacks asking these questions, and I think it is
10 fair game. But part of the problem with the late
11 discovery is that it is an issue where that 302 also
12 has some conversations about Carlos Herrera that we
13 haven't brought out, and I don't want them to be
14 brought out.

15 THE COURT: Let's see what Ms. Jacks does.
16 You're not waiving any objection.

17 MS. JACKS: I specifically did not ask
18 about those.

19 THE COURT: You can object if she gets
20 there.

21 MS. BHALLA: I'm not worried about Ms.
22 Jacks. I'm worried about the Government's
23 cross-examination.

24 THE COURT: Approach before you get into
25 that, because right at the moment I think it would

1 be beyond the scope.

2 MS. BHALLA: Thank you, Your Honor.

3 THE COURT: All right. Ms. Jacks.

4 (The following proceedings were held in
5 open court.)

6 BY MS. JACKS:

7 Q. Thank you. Excuse me, Agent Sainato.
8 Before the break, I was asking you about the
9 discussion that occurred involving Mr. Urquizo after
10 the Molina murder. Do you remember where we were?

11 A. Yes, ma'am.

12 Q. What I want to ask you is: Did Mr.
13 Urquizo tell you that there was a discussion that he
14 engaged in with some other inmates about hitting or
15 killing Daniel Sanchez?

16 A. Yes, ma'am.

17 Q. And did he tell you that there were two
18 reasons that people were discussing hitting or
19 killing Daniel Sanchez after the Molina murder?

20 A. I remember one.

21 Q. Well, I'll ask them to you separately.
22 Did he tell that one of the reasons that they wanted
23 to kill Daniel Sanchez was because he did not
24 participate in the Molina homicide?

25 A. I'll check my notes on that one.

1 Q. That would be at Bates 54288, fourth
2 paragraph.

3 A. Thank you. Yes, ma'am. That's accurate.

4 Q. And did he also tell you that the other
5 reason they talked about killing Daniel Sanchez was
6 because he didn't cover the camera, that he didn't
7 do the job he'd been tasked with, covering the
8 camera?

9 A. That's correct.

10 Q. And did he say anything about discussions
11 regarding killing Daniel Sanchez's brother?

12 A. Yes.

13 Q. Because they couldn't get to Daniel
14 Sanchez, so they talked about killing his brother,
15 Ronald?

16 A. Correct.

17 Q. And that was because Daniel Sanchez didn't
18 participate in the homicide and didn't cover the
19 cameras?

20 A. Correct.

21 Q. Now, I have a few more questions about the
22 content of the FBI 302.

23 A. Okay.

24 Q. So if you need to look at that to refresh
25 your memory, just let me know. Okay? So first of

1 all, in the FBI 302 is there any mention about the
2 fact that when Lupe Urquizo got to Southern, there
3 was no property officer on duty?

4 A. No, ma'am.

5 Q. Is there any mention in the 302 regarding
6 this interview that when Mr. Urquizo passed blue pod
7 on the way to yellow pod, he spoke to Mario
8 Rodriguez, Timothy Martinez, and Jerry Montoya?

9 A. No, ma'am.

10 Q. Is there anything in the FBI 302 that says
11 that -- that documents what Mr. Urquizo told you on
12 that day that he said Mario Rodriguez passed him a
13 note under the door which expressed Mr. Rodriguez'
14 desire to have Timothy Martinez, Jerry Montoya, and
15 Jerry Armenta kill Javier Molina?

16 A. No, ma'am.

17 Q. Is there anything in the FBI 302 regarding
18 that January 22, 2018, interview that reflects that
19 Mr. Urquizo told you that the next day Mario
20 Rodriguez sent him a note saying that Javier Molina
21 would be killed that afternoon?

22 A. No, ma'am.

23 Q. Is there anything in the FBI 302 that
24 reflects that Mr. Urquizo told you in that note Mr.
25 Rodriguez, Mario Rodriguez, said that Jerry Montoya,

1 Jerry Armenta, and Timothy Martinez were tasked with
2 the actual killing?

3 A. Let me look real quick. I don't think so.

4 Q. At the FBI 302?

5 A. Yes, ma'am. No, ma'am.

6 Q. I mean, according to Urquizo, Rodriguez
7 told him that he had assigned Montoya, Armenta, and
8 Timothy Martinez roles in the actual killing of
9 Javier Molina, right?

10 A. Could you say that one more time?

11 Q. I said according to that interview, Lupe
12 Urquizo told you that Mario Rodriguez said that --
13 let me go back. Lupe Urquizo told you that Mario
14 Rodriguez had told him that Rodriguez had assigned
15 Montoya, Armenta, and Timothy Martinez to actually
16 perform the murder?

17 A. Yes, ma'am.

18 Q. And there is nothing about that in the
19 302?

20 A. No, ma'am.

21 Q. And is there anything in the 302 regarding
22 the fact that on that date, Lupe Urquizo told you
23 that Mario Rodriguez had told him the day of the
24 Molina murder that Mr. Sanchez, Daniel Sanchez, had
25 been tasked with covering the cameras?

1 A. In the 302 or in the --

2 Q. In the 302. We know it's in your notes.
3 You just testified to it. Is there anything in the
4 302 about that?

5 A. No, ma'am.

6 Q. And is there anything in the 302 regarding
7 the discussion that Lupe Urquizo had with others
8 after the Molina murder about hitting Daniel
9 Sanchez?

10 A. No, ma'am.

11 Q. And is there anything in the 302 about the
12 discussion among those people being that Daniel
13 Sanchez -- they wanted to kill Daniel Sanchez
14 because he did not participate in the Molina
15 homicide or cover the camera like he was supposed
16 to?

17 A. That is not in the 302.

18 Q. Nothing in the 302?

19 A. No, ma'am.

20 MS. JACKS: If I could have a moment?

21 THE COURT: You may.

22 MS. JACKS: I have nothing further. Thank
23 you.

24 THE COURT: Thank you, Ms. Jacks. Any
25 other defendants have direct examination of Agent

1 Sainato?

2 MR. VILLA: No, Your Honor.

3 MS. DUNCAN: No, Your Honor.

4 THE COURT: All right. Ms. Armijo.

5 CROSS-EXAMINATION

6 BY MS. ARMIJO:

7 Q. Agent Sainato, what was the purpose of
8 writing -- and just to be clear, the 302 that
9 Ms. Jacks was referring to was not written by you,
10 correct?

11 A. Correct.

12 Q. Who was it written by?

13 A. Special Agent Stemo.

14 Q. And at whose request was that 302 written?

15 A. The U.S. Attorney's Office.

16 Q. Okay. So let's go back to that interview
17 that you sat in on. What was the point of that
18 meeting?

19 A. It was a pretrial interview.

20 Q. Okay. And so who was in charge of that
21 meeting, of asking questions?

22 A. Mr. Beck.

23 Q. Okay. And were you there primarily to
24 take note if there was any new information?

25 A. That's correct.

1 Q. And then that's the notes that you were
2 referring to, to refresh your recollection?

3 A. Yes, ma'am.

4 Q. And then did you subsequently go out of
5 town?

6 A. I left the following week. There was a
7 break between when -- I'd ask Mr. Beck if he wanted
8 a 302 written, because I'd never done a pretrial
9 interview before. It took him a couple of days to
10 get back to me. By that time, I was either out of
11 town or just about out of town. I can't remember
12 the exact timeline. But I wasn't able to write the
13 report, so I sent the notes to Agent Stemo to write
14 the 302.

15 Q. Was the purpose of a 302 just to provide
16 new information?

17 A. I believe that's what it was, yes, ma'am.

18 Q. All right. And I'm going to --

19 MS. JACKS: Objection. It doesn't sound
20 like this witness knows.

21 Q. Is that your understanding?

22 A. That is my understanding, yes, ma'am.

23 Q. All right. And I'm going to show you
24 Bates starting 43638.

25 MS. ARMIJO: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 Q. I want you to look at this document and
4 see if it is a debrief report regarding Lupe Urquizo
5 on March 6th of 2017?

6 A. Yes, ma'am. This looks like a 302 written
7 by Special Agent Acee on March 6, 2017, reference
8 Lupe Urquizo.

9 Q. All right. And in reference to that, are
10 you aware if some of the questions that Ms. Jacks
11 asked you about, that were not included in the 302
12 that Nancy Stemo wrote, if they are actually
13 included in here?

14 A. I haven't read that report in its
15 entirety.

16 Q. All right. And I'm first going to ask you
17 about page 2 of this report. You could read that
18 second to last paragraph to yourself.

19 A. Yes, ma'am.

20 Q. And it was information in that report that
21 was previously reported about Mr. Urquizo and what
22 pod he was placed in and who came up and spoke to
23 him?

24 A. Yes, ma'am.

25 Q. And then going to page 6 of that report.

1 MS. ARMIJO: If I may approach, Your
2 Honor?

3 THE COURT: You may.

4 Q. I'm sorry. Go to page 4.

5 MS. BHALLA: May we get a page number, Ms.
6 Armijo?

7 MS. ARMIJO: Yes. I'm sorry. 43640.

8 BY MS. ARMIJO:

9 Q. If you look at that last paragraph. Was
10 there previous information in there already about
11 letters that Mario Rodriguez wrote to Mr. Urquizo
12 and sent him under the door?

13 A. Yes, ma'am.

14 Q. All right. And specifically, does that
15 indicate that --

16 MS. JACKS: Object to counsel reading from
17 the 302. This witness didn't write it. He wasn't
18 present at the interview. It would be hearsay.

19 THE COURT: Let's not read out of it.
20 Let's do our questions differently than that.

21 BY MS. ARMIJO:

22 Q. All right. You have that in front of you?

23 A. Yes, ma'am.

24 Q. Does Mr. Urquizo indicate anything in
25 there about the letter that Mr. Rodriguez sent to

1 him underneath the door?

2 A. Yes, ma'am.

3 Q. And does that letter include information
4 as to who wrote the letter to him?

5 A. If I may look at the report?

6 Q. Yes, please do.

7 A. Yes, ma'am.

8 Q. And who wrote the letter?

9 MS. JACKS: Object to this witness
10 reading. This would be hearsay. He did not
11 participate in the interview, and he did not write
12 the report.

13 THE COURT: It does seem like it's
14 secondhand. I mean, if he didn't write the 302, I
15 think his notes are something else, but the 302
16 would not be his, so I sustain the objection.

17 MS. ARMIJO: Okay, Your Honor. We're
18 offering it not for the truth of the matter
19 asserted, but for the reasoning that it's not
20 included in another report that he was just --

21 MS. JACKS: The information that Ms. --

22 THE COURT: Well, I sustained the
23 objection.

24 BY MS. ARMIJO:

25 Q. All right. Going to page 4 of the report,

1 which is 43641. And, again, just read that to
2 yourself. Is there also information there regarding
3 Mr. Sanchez? And I don't want to get into the
4 contents of it, but was there information in there
5 regarding Mr. Sanchez and his involvement in Molina?

6 A. Yes, ma'am.

7 Q. And lastly, on Bates 43643. Is there also
8 information in that report in reference to Ronald
9 Sanchez getting hit?

10 A. Yes, ma'am.

11 Q. So going back to the report that was
12 generated specifically after Mr. Beck was meeting
13 with Mr. Urquizo, what was the purpose of just
14 limiting it to these things?

15 MS. JACKS: Objection, Your Honor. I
16 don't think this witness prepared the 302, so I'm
17 not sure what the basis of his knowledge would be.

18 THE COURT: Well, I think you're going to
19 have to lay some foundation for the question. I'm
20 not sure I see yet how he can answer that question.

21 BY MS. ARMIJO:

22 Q. Did Mr. Beck ask you to write a 302?

23 A. He did.

24 Q. And were you unable to do that?

25 A. I was.

1 Q. So did you task somebody else with doing
2 so?

3 A. Yes.

4 Q. And in doing so, did you convey what was
5 the purpose of it, since you had been tasked with
6 it? Let me ask it a different way. Since you had
7 been tasked with it and you were unable to do so,
8 did Ms. Stemo then do that task for you?

9 A. Yes.

10 Q. So what was the point in making that 302?

11 A. My understanding, what Mr. Beck wanted in
12 the 302 was just new information that was not
13 previously covered in other debriefs of Mr. Urquizo.

14 Q. And I'm going to show you -- and these are
15 letters dated January 28th to the attorneys in this
16 case.

17 MS. ARMIJO: May I approach the witness,
18 Your Honor?

19 THE COURT: You may.

20 BY MS. ARMIJO:

21 Q. And I'm first going to start with one
22 letter. I'm not going to ask you to read anything
23 out loud, but does it appear to be dated January 28,
24 2018?

25 A. Yes, ma'am.

1 Q. Does it appear to be to the defense
2 attorneys in this case?

3 A. Yes, ma'am.

4 Q. And in there, again not reading it out
5 loud, does it appear to have information that Lupe
6 Urquizo provided?

7 A. Yes, ma'am.

8 Q. And I'm going to show you another letter
9 dated January 28th, as well.

10 A. Yes, ma'am.

11 Q. Does it appear to be addressed to the
12 defense attorneys in this case?

13 A. Yes, ma'am.

14 Q. Just to be clear, this is a letter from
15 the Government to -- I believe from the Government
16 to the defense attorneys.

17 A. Okay.

18 Q. Is that correct?

19 A. Yes, ma'am.

20 Q. And does this second letter also have
21 information about Lupe Urquizo's statement?

22 A. Yes, ma'am.

23 Q. Now, lastly, going specifically to your
24 notes, do you still have those in front of you?

25 A. Yes, ma'am.

1 Q. Okay. Now, Ms. Jacks was asking you
2 questions specifically about page 3 of that
3 document, and she's talking about Mr. Rodriguez'
4 note that Urquizo indicated that he received. Do
5 you recall that? I believe it's the third paragraph
6 from the bottom.

7 A. Yes, ma'am.

8 Q. Now, does the note actually say that
9 Rodriguez had the desire to have Timothy Martinez,
10 Jerry Montoya, and Armenta do the hit? Or does it
11 just say that there was -- that the note stated the
12 desire to have Timothy Martinez, Jerry Montoya, and
13 Jerry Armenta do the hit?

14 A. If I may refer?

15 Q. Sure. And, again the distinction being
16 Rodriguez's desire, his desire, or the desire?

17 A. My notes say the desire.

18 Q. All right. And it doesn't indicate who
19 actually came up with the plan, does it?

20 A. No.

21 Q. And it doesn't indicate if there was
22 anybody -- who the desire referred to, does it?

23 A. No, ma'am.

24 Q. All right. And then in reference to Ms.
25 Jacks' question about -- going now to the last page,

1 I believe, of your notes, in talking about the
2 question that Ms. Jacks asked you about whether or
3 not there was a hit on Daniel Sanchez because he did
4 not participate in the Molina murder or even cover
5 the camera like he was supposed to. Let me ask you
6 a couple of questions about that.

7 Are you aware that Mr. Sanchez had been
8 tasked with taking a shank from one of the persons
9 that had actually stabbed Mr. Molina?

10 MS. JACKS: Objection, Your Honor. That's
11 treating the testimony -- well, it's assuming facts
12 not in evidence and treating the testimony as if it
13 is a foregone conclusion.

14 THE COURT: Well, let me ask him if -- why
15 don't you word it in terms of is he aware of any
16 evidence that does that.

17 MS. ARMIJO: You know, Your Honor, I'll
18 ask it as a hypothetical, maybe.

19 THE COURT: Well, I'm not sure we're
20 interested in hypotheticals with this witness. If
21 you want to ask it my way, either ask it my way or
22 don't --

23 MS. ARMIJO: Yes, I will, Your Honor.

24 BY MS. ARMIJO:

25 Q. Are you aware of whether or not, as part

1 of the plan to kill Jerry Montoya -- I'm sorry -- to
2 kill Javier Molina, if the shanks -- if Daniel
3 Sanchez was supposed to take one of the shanks?

4 A. I think there was some mention of it that
5 I just read in that report. But prior to a couple
6 minutes ago, no, ma'am.

7 Q. Okay. You read it in the other report
8 that I gave you, the other debrief?

9 A. Just now, yes, ma'am.

10 Q. Okay.

11 MS. JACKS: I would move to strike all of
12 that as hearsay.

13 THE COURT: Well, yeah, that wasn't really
14 the question I was trying to -- I thought was
15 appropriate. So I'll strike the question and the
16 answer.

17 MS. ARMIJO: All right.

18 BY MS. ARMIJO:

19 Q. Now, what your report indicates is that
20 Sanchez did not participate or even cover the camera
21 like he was supposed to, correct?

22 MS. JACKS: Objection. Counsel is not
23 reading -- she's omitting words. The report reads
24 differently than what Ms. Armijo just read.

25 THE COURT: Let me let you deal with that

1 on redirect. Overruled.

2 MS. JACKS: I don't think she should be
3 allowed to misrepresent what's in the notes to this
4 jury.

5 THE COURT: It's overruled.

6 MS. ARMIJO: Sorry, Your Honor. There was
7 an objection before for reading from it.

8 BY MS. ARMIJO:

9 Q. Does the report, to be fair -- I'll read
10 right from it since there won't be an objection to
11 it -- indicate that there was a hit, about hitting
12 Daniel Sanchez because he did not participate in the
13 Molina homicide or even cover the camera like he was
14 supposed to do?

15 A. Yes, ma'am.

16 Q. Okay. Now, that doesn't indicate whether
17 or not Mr. Sanchez had any involvement in calling
18 the hit, does it?

19 MS. JACKS: Objection, calls for a
20 conclusion.

21 THE COURT: Well, if he knows.

22 A. Could you state it again? I'm sorry.

23 BY MS. ARMIJO:

24 Q. That does not necessarily -- that does not
25 reference anything about whether or not Mr. Sanchez

1 actually called the hit?

2 A. That statement does not, no.

3 Q. Okay. Because would you agree that
4 someone can call a hit, and then there could also be
5 somebody that actually participates in actually
6 doing the murder?

7 MS. BHALLA: Objection, speculation and
8 compound.

9 MS. JACKS: And also, participation would
10 include calling.

11 THE COURT: Let me rule on one objection
12 at a time. I'm going to sustain. It's really not
13 helping us to find out what he thinks about these
14 things, so it's sustained.

15 BY MS. ARMIJO:

16 Q. Mr. Urquizo never said that Daniel Sanchez
17 was not involved, did he?

18 MS. JACKS: Objection, misstates the
19 testimony.

20 THE COURT: Overruled.

21 A. I'm sorry?

22 BY MS. ARMIJO:

23 Q. Mr. Urquizo never told you during that
24 pretrial -- or I should say told Mr. Beck during
25 that pretrial interview that Daniel Sanchez was not

1 involved in the Molina murder?

2 MS. JACKS: Objection, misstates the
3 testimony.

4 THE COURT: Overruled.

5 A. Could you do it one more time? I'm sorry.

6 BY MS. ARMIJO:

7 Q. Mr. Urquizo, during the interview that Mr.
8 Beck had with him, he never told you that Daniel
9 Sanchez was not involved in the Javier Molina
10 murder?

11 A. Correct.

12 MS. ARMIJO: If I may have a moment?

13 THE COURT: You may.

14 MS. ARMIJO: That's it. I pass the
15 witness.

16 THE COURT: All right. Thank you, Ms.
17 Armijo.

18 Ms. Jacks, do you have redirect of Agent
19 Sainato?

20 MS. JACKS: Just a few questions.

21 THE COURT: Ms. Jacks.

22 REDIRECT EXAMINATION

23 BY MS. JACKS:

24 Q. Agent Sainato, while Ms. Armijo was asking
25 you questions, did she show you an FBI 302 from

1 March 6, 2017?

2 A. She showed me a 302. I can't remember the
3 specific date on it, but that sounds right.

4 Q. Okay. But it was a report of a prior
5 interview with Mr. Urquizo?

6 A. Yes, ma'am.

7 Q. And were you present during that
8 interview?

9 A. I was not.

10 Q. Did you prepare that 302?

11 A. No, ma'am.

12 Q. And had you even seen it prior to today?

13 A. No, ma'am.

14 Q. Okay. Now, Ms. Armijo asked you some
15 questions about what Mr. Beck asked you to do in
16 terms of preparing a 302 documenting the interview
17 that you participated in, in January of 2018. Do
18 you recall those questions?

19 A. Yes, ma'am.

20 Q. And specifically, I think what she asked
21 you about was: Did Mr. Beck tell you to just
22 include, quote, "new information"?

23 A. That's what she asked me, yes, ma'am.

24 Q. You didn't prepare the report, right?

25 A. No, ma'am.

1 Q. And in order to know what information
2 might be, quote, "new," you would have had to go
3 back and read all the previous FBI 302s regarding
4 interviews with Mr. Urquizo, right?

5 A. If I was preparing the report, yes, ma'am.

6 Q. Okay. Because otherwise, you wouldn't
7 know what was new, right?

8 A. Correct.

9 Q. And while you were looking at that report
10 that Ms. Armijo showed you, did you notice whether
11 it said anything about Mr. Sanchez not participating
12 in the homicide of Javier Molina and not covering
13 the cameras?

14 A. I looked at it quite briefly, ma'am.

15 Q. Well --

16 A. Could you restate?

17 Q. Yeah. I mean, the point is, there's
18 nothing in that 302 that says Mr. Urquizo said Mr.
19 Sanchez did not participate in the Molina homicide
20 and did not cover the cameras?

21 A. I can't really say what's not in that 302.
22 I'm sorry.

23 Q. It's lengthy?

24 A. Correct.

25 Q. And you didn't have a chance to read it up

1 there on the witness stand?

2 A. Correct.

3 Q. Okay. I want to just try to make sure I
4 understand what your role in the interview in
5 January 2018 was with respect to Lupe Urquizo.

6 A. Okay.

7 Q. So during the interview, you were the
8 person that was tasked with taking notes, right?

9 A. Correct.

10 Q. And you took that job seriously?

11 A. Yes, ma'am.

12 Q. And you attempted to be as accurate as
13 possible?

14 A. Yes, ma'am.

15 Q. And it sounds like the way that you took
16 notes by just typing them into your computer was
17 almost like you were transcribing the interview?

18 A. I wouldn't say transcribing. That would
19 involve more like what these ladies are doing here.
20 I was summarizing as we went.

21 Q. Okay. And summarizing every topic that
22 was discussed during that interview?

23 A. Yes, ma'am.

24 Q. And did you make an attempt to do that as
25 accurately as possible?

1 A. I did.

2 Q. And did you make an attempt not to leave
3 anything out?

4 A. Yes, ma'am.

5 Q. And you've had a chance to review those
6 notes both yesterday and today, right?

7 A. Yes, ma'am.

8 Q. And are they accurate notes of that
9 interview with respect to Mr. Urquizo?

10 A. Yes, ma'am.

11 Q. And you would agree with me that they're
12 much more detailed than the FBI 302 that was
13 ultimately prepared?

14 A. Yes, ma'am.

15 Q. And the four pages are single-spaced,
16 right?

17 A. Yes.

18 Q. It's a lot of information?

19 A. It is.

20 Q. And do you recall -- and I'm just asking
21 from your recollection of that interview -- how long
22 you sat there and spoke with Mr. Urquizo back in
23 January of 2018?

24 A. I don't recall.

25 Q. Can you give us an estimate? Like was it

1 more than an hour? Was it more than two hours?

2 A. More than an hour. I don't know if two.

3 Q. So somewhere, probably, between an hour
4 and two hours?

5 A. That's fair.

6 Q. And I think you testified, when Ms. Armijo
7 asked you, that Lupe Urquizo never said Daniel
8 Sanchez was not involved?

9 A. I said that.

10 Q. Do you recall that testimony?

11 A. Yes, ma'am.

12 Q. So I have a few questions about that.
13 First of all, Mr. Urquizo told you that he discussed
14 with other people killing Daniel Sanchez after the
15 Molina murder, right?

16 A. Yes, ma'am.

17 Q. And he told you that they discussed that
18 because Daniel Sanchez did not participate in the
19 Molina homicide?

20 A. That's correct.

21 Q. Or even cover the camera like was supposed
22 to do?

23 A. Yes, ma'am.

24 Q. And Mr. Urquizo also told you that Mario
25 Rodriguez tasked Mr. Sanchez with covering the

1 camera?

2 A. If I may refer to my notes for that one?

3 Q. Of course.

4 MS. ARMIJO: Ms. Jacks, are you referring
5 to a certain page?

6 MS. JACKS: 54287.

7 BY MS. JACKS:

8 Q. Last paragraph. I think I asked you about
9 this. I did ask you.

10 A. Yes, ma'am. Thank you.

11 Q. That was supposed to be his job?

12 A. Correct.

13 Q. And other --

14 MS. ARMIJO: Your Honor, that incorrectly
15 reflects what he wrote. I'd ask that Ms. Jacks --

16 Q. I'll read what you wrote. Did you write
17 in your 302 that Daniel Sanchez was supposed to
18 cover the camera?

19 A. I did.

20 Q. And did you write in your 302 that that
21 was information provided to Mr. Urquizo by way of a
22 note written by Mario Rodriguez?

23 A. I didn't write the 302, ma'am.

24 Q. I'm sorry. The notes. I'm sorry. Let me
25 reask the question. Did you write in your notes

1 that that information was contained in a note that
2 Mario Rodriguez passed to Lupe Urquizo?

3 A. I believe so.

4 Q. And did that note also assign roles to Mr.
5 Montoya, Mr. Armenta, and Mr. Martinez?

6 A. Yes, ma'am.

7 Q. In regards to the discussion that day
8 about the Molina homicide, other than saying that
9 Daniel Sanchez was supposed to cover the camera, did
10 Mr. Urquizo tell you anything else about Daniel
11 Sanchez playing a role or being assigned a role in
12 that crime?

13 A. Not that I can recall.

14 MS. JACKS: I have nothing further.

15 THE COURT: Thank you, Ms. Jacks.

16 Does any other defendant have any redirect
17 of Mr. Sainato? All right. You may step down.
18 Thank you for your testimony. Is there any reason
19 that the agent cannot be excused, Ms. Jacks?

20 MS. JACKS: Yes, he may be. Thank you.

21 THE COURT: All right. Can he be excused
22 from the Government's standpoint, Ms. Armijo?

23 MS. ARMIJO: Yes, Your Honor.

24 THE COURT: All right. You are excused
25 from the proceeding, not hearing any other

1 objection.

2 Why don't I see counsel up here at the
3 bench.

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1 (The following proceedings were held at
2 the bench.)

3 THE COURT: I know the defendants wanted
4 to close with Mr. Acee. Now I know why y'all wanted
5 to call that FBI agent. Do you all have any further
6 witnesses or evidence? Do y'all want me to at this
7 time ask you that and you rest on the record?

8 MS. JACKS: I think we should rest. And
9 there are some rulings that the Court needs to make,
10 and there may be some issues with exhibits, so
11 provisionally --

12 THE COURT: What if I did this? What if I
13 did like we did with the Government? I'll give you
14 a chance to rest, and there will be the
15 understanding subject to the defendants getting
16 with -- and I need to show Ms. Standridge my
17 records, and we'll make sure that the defendants'
18 exhibits are straight. Does that work for you? And
19 then we can also take up any motion while -- after
20 we excuse the jury.

21 MS. JACKS: Yes, Your Honor, that's fine.

22 MR. LOWRY: I have one small evidentiary
23 matter. When Mr. Montoya was on the stand, he
24 mentioned chemical analysis of the heroin, which is
25 the basis of his plea agreement. I don't think it

1 exists. I've asked the attorneys to produce it.
2 I'd rather go by a stipulation that it doesn't
3 exist.

4 THE COURT: Does it exist?

5 MS. ARMIJO: The original file was not
6 mine. It was reassigned to me. I know in my file I
7 don't have it. My last email yesterday afternoon, a
8 task force officer has been tasked with submitting
9 it, and I was waiting to hear back whether, in fact,
10 there was. So we won't stipulate that there is not
11 one. I don't know if we can work around something,
12 and I can check. I haven't checked to see if that's
13 been updated. He did make a request. I did check
14 my file. Based upon that file -- in the filing I
15 received, I should say -- I made additional
16 inquiries.

17 THE COURT: At the present time you don't
18 have it?

19 MS. ARMIJO: No.

20 THE COURT: Could you live with the
21 stipulation to that effect, that you all explain to
22 the jury --

23 MR. LOWRY: That he doesn't have one.

24 THE COURT: -- and the evidence closes,
25 and that's where it stands? Is everybody okay with

1 that stipulation? Anything else we need to do while
2 we have the jury present?

3 All right. I'll call on you, Mr. Lowry,
4 that you have a stipulation with the Government that
5 you need to make in front of the jury and say that
6 in front of the jury.

7 MS. ARMIJO: I'm sorry, Your Honor?

8 THE COURT: I'll just call on Mr. Lowry as
9 a stipulation. Then I'll call on the defendants,
10 whether they have any further evidence. Why don't I
11 just call on you, Ms. Armijo, and you can state what
12 you have done and --

13 MR. LOWRY: We can make it more simple
14 than --

15 MR. CASTELLANO: I think we can say that
16 the defense requested a laboratory report related to
17 Mario Montoya's sale of heroin, and there is no lab
18 report because it was --

19 MS. ARMIJO: We don't know.

20 THE COURT: To date -- how about to date,
21 the Government hasn't been able to find or
22 produce --

23 MR. LOWRY: The Government has not
24 provided one.

25 MR. CASTELLANO: He pled guilty to the

1 charges, so we don't have a lab report.

2 MR. LOWRY: I think that's exactly what
3 happened.

4 THE COURT: Okay. Can you live with that
5 then?

6 MR. LOWRY: That's what I prefer, exactly
7 what Mr. Castellano just said.

8 MR. CASTELLANO: We want to make sure it's
9 accurate. We don't know if there is a lab report.

10 THE COURT: I don't think Mr. Lowry is
11 requiring you to say it doesn't exist; simply say to
12 date you have not been able to find or produce that
13 report.

14 MR. LOWRY: That's correct, Your Honor.

15 MS. ARMIJO: The last email that I had was
16 Task Force Officer Kubler (phonetic) was going to be
17 checking on it. Other than this document, I haven't
18 checked.

19 MR. BECK: And then we're out of time.

20 THE COURT: Why don't I get this
21 stipulation on the record, then I'll turn to the
22 defendants and y'all can say what you want.

23 MR. VILLA: Your Honor, we just conferred.
24 Will you ask each defendant individually so we can
25 each rest?

1 THE COURT: I will.

2 (The following proceedings were held in
3 open court.)

4 THE COURT: All right. Ms. Armijo, do you
5 and Mr. Lowry have a stipulation as to a report?

6 MS. ARMIJO: We do. But I believe that
7 Mr. Castellano is going to --

8 THE COURT: Mr. Castellano, if you have
9 the stipulation on the report.

10 MR. CASTELLANO: Yes, Your Honor. I'm
11 going to try. I think the stipulation will be that
12 Mario Montoya admitted and was convicted of selling
13 heroin, and that he pled guilty to that charge, he
14 testified that it was heroin, and at this point we
15 do not have a lab report reflecting the results of
16 any testing of that heroin.

17 THE COURT: All right. Is that
18 stipulation sufficient, Mr. Lowry?

19 MR. LOWRY: Yes, it is, Your Honor.

20 THE COURT: All right. At this time
21 Ms. Jacks, Mr. Jewkes, does Mr. Sanchez have further
22 witnesses or evidence he wishes to present?

23 MS. JACKS: Your Honor, we do not. And on
24 behalf of Mr. Sanchez, the defense recess.

25 THE COURT: All right. Mr. Lowry, Ms.

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1 Duncan, does Mr. Baca have further witnesses or
2 evidence he wishes to present?

3 MR. LOWRY: No, we do not, Your Honor, and
4 Mr. Baca would rest.

5 THE COURT: All right. Mr. Maynard, Ms.
6 Bhalla, does Mr. Herrera have further witnesses or
7 evidence he wishes to present?

8 MS. BHALLA: No, thank you, Your Honor.
9 Mr. Herrera and the defense team rests as well.

10 THE COURT: Mr. Villa or Ms. Fox-Young,
11 does Mr. Perez have further witnesses he wishes to
12 present?

13 MR. VILLA: No, Your Honor, we rest.

14 THE COURT: All right, ladies and
15 gentlemen, I'm going to meet with the attorneys and
16 the parties for a few moments, so relax for a little
17 bit. But it's about time for our afternoon break
18 anyway.

19 Let me remind you, because we are shifting
20 gears here, of a few things that are especially
21 important. Until the trial is completed, you're not
22 to discuss this case with anyone, whether it's
23 members of your family, people involved in the
24 trial, or anyone else, and that includes your fellow
25 jurors. If anyone approaches you and tries to

1 discuss the case with you, please let me know about
2 it immediately.

3 Also, you must not read or listen to any
4 news reports of the trial. Again, don't get on the
5 internet and do any research for purposes of this
6 case.

7 And finally, remember that you must not
8 talk about anything with any person who is involved
9 in the trial, even if it doesn't have anything to do
10 with the trial.

11 If you need to speak with me, simply give
12 a note to one of the court security officers or Ms.
13 Standridge. Because we may be changing gears rather
14 rapidly in different stages of the case, bear with
15 me as I repeat these, because they're very
16 important. Y'all have been very good about
17 following instructions during this trial. Let's
18 keep it up till the end.

19 All right. We'll be in recess for a few
20 minutes. Just relax. I can't promise you exactly
21 how long it will take, but we'll keep you posted and
22 try not to have you waiting too long.

23 All right. We'll be in recess for a few
24 minutes.

25 (The jury left the courtroom.)

1 THE COURT: Let's be seated and talk about
2 how we're going to proceed. I've been working
3 pretty hard on the jury instructions. What I would
4 propose to do is to print those out. If I have
5 overlooked anybody's objection and not made a
6 change, it hasn't been purposeful; it's probably
7 because I've been editing and proofing my own work.
8 I probably need everybody's eyes to look at it.

9 So what would you think about if -- I got
10 one more change here I'm making in the Fifth Circuit
11 RICO instruction. But if I made that change,
12 printed it off, and you took a look at it and see if
13 I caught everything, and then there's a few places
14 where, you know, I made changes that the Government
15 may not want and, vice versa, the defendants may not
16 want that I made that the Government made. So we
17 may need to have some discussion on it.

18 But does that make sense, to print it off,
19 let Ms. Bean take a break, and we'll make y'all a
20 copy and you can take a look at it?

21 MR. CASTELLANO: Yes, Your Honor.

22 THE COURT: Does that work for the
23 defendants?

24 MS. JACKS: It makes sense. I guess I
25 want to bring this up because it's 4:00 on Friday.

1 I'm wondering if we're going to read the
2 instructions today. And if we're not and we have
3 other work, too, I'm wondering if the jury can go
4 home early.

5 THE COURT: Well, here's what I was
6 thinking. If you take a look at them and if we get
7 quick agreement -- I'm not saying we will -- then it
8 would seem to make sense -- Ms. Wild thinks that I
9 can read these things in 45 minutes to an hour.
10 So -- and if we did that, I get out of your way and
11 y'all got a fighting chance of closing in a day,
12 which I know some of you had wanted that to occur.
13 And I was going to suggest -- and y'all just be
14 thinking about this while we take our break -- if
15 y'all wanted to do it in a day, you got me out of
16 the way, and you wanted to do it in a day maybe
17 y'all could put yourselves on a chess clock, and if
18 you wanted me to enforce the rules, I'll get you all
19 done on Monday.

20 If you leave me till Monday, then I think
21 probably realistically I'm going to take up part of
22 your morning and we won't get them all done on
23 Monday. And that's fine with me, but I'm not going
24 to, like, read for 45 minutes, an hour, and send
25 them home and bring them back the next day, given

1 that I don't know if we can get it done in a day.

2 So is that kind of the ground rules there?

3 MS. JACKS: I'm glad you explained it, and
4 if you think it's an hour, that gives us until 4:30,
5 so we can give it our best shot.

6 THE COURT: Yeah, Ms. Wild estimated that
7 45 minutes to an hour, and she's listened to me a
8 lot over the years. Now, I can't promise you that,
9 but they have gotten shorter.

10 So why don't I go off the record and let
11 Ms. Bean take her break, and I'll try to get you a
12 copy as soon as possible.

13 (The Court stood in recess.)

14 THE COURT: So why don't I start with you,
15 Ms. Jacks. May I suggest you do it any way you want
16 to, but maybe just kind of go chronologically so the
17 Government has a chance to stay ahead of you?

18 MS. JACKS: That's how I was going to do
19 it.

20 THE COURT: All right.

21 MS. JACKS: So I think my first comment is
22 on instruction number 7. I think that in the first
23 paragraph, last line, after "evidence," we had
24 previously suggested that "I have admitted as to any
25 one defendant" be inserted before "as true or

1 accurate." So that last sentence I think in our
2 redline version would have read, "This does not
3 mean, however, that you must accept all of the
4 evidence that I have admitted as to any one
5 defendant as true or accurate."

6 THE COURT: Okay. I think y'all agreed to
7 that earlier, so I'm going to add that unless y'all
8 think otherwise.

9 MR. CASTELLANO: Can we do that again?

10 THE COURT: Yes. Let me get it typed in.
11 "This does not mean, however, that you must accept
12 all of the evidence that I have admitted as to any
13 one defendant as true or accurate." Correct,
14 Ms. Jacks?

15 MS. JACKS: Yes.

16 THE COURT: Can you live with that, Mr.
17 Castellano?

18 MR. CASTELLANO: We're okay with that,
19 Your Honor.

20 MS. JACKS: Then, Your Honor, we had
21 suggested in our redline version adding I think it
22 was five questions to this witness credibility. The
23 instruction asks several questions, and I think we
24 suggested five questions. They were questions like,
25 "Did the witnesses have an opportunity to" --

1 THE COURT: I don't know why they're not
2 in there. I had written those out.

3 MS. JACKS: Somebody doesn't like me.

4 (A discussion was held off the record.)

5 MS. JACKS: Judge, if you need the
6 language, I can probably print out that paper.

7 THE COURT: I'm concerned the change you
8 just gave me I had made, so now I'm wondering
9 whether changes were made throughout the day, all
10 these changes that you're raising, I had either sent
11 to Albuquerque or given to Mr. Hammond, and they're
12 not in there, so I'm beginning to wonder if all the
13 changes I've made today have been made. If they
14 haven't --

15 MR. VILLA: Your Honor, many of the
16 changes proposed by defendants that were not in the
17 eighth are now in the ninth, so I think a lot of
18 them were made.

19 MS. JACKS: I would agree with that. We
20 just found very few that were not. And we gave it a
21 pretty good once-over.

22 THE COURT: Well, if you want to give us
23 those five questions, I know I wrote them out to be
24 typed in, but I don't have either your redline
25 copy -- I gave that to Mr. Hammond as well as --

1 MS. JACKS: Your Honor, I'm happy to do
2 that. Why don't we go through the rest of the
3 changes, and somebody else can talk, and I'll print
4 those five questions out.

5 THE COURT: Okay. Why don't we do this.
6 Mr. Mendenhall, find -- was it 1833-1, your redline
7 version?

8 MR. VILLA: 1827-1.

9 THE COURT: 1827-1, the redline version,
10 and it's number --

11 MS. JACKS: Jury instruction number --
12 well, the numbers change, but it's the witness
13 credibility instruction. It's currently 7. It
14 might have been 6 or 8.

15 MR. VILLA: It was 6. 1827-1, instruction
16 number 6, which is now 7.

17 THE COURT: Thank you. What's your next
18 one, Ms. Jacks?

19 MS. JACKS: After the five questions, then
20 on the next page, the last paragraph of the
21 instruction, the first sentence, "verdicts" should
22 be plural. So the --

23 THE COURT: All these changes, I'm
24 beginning to be afraid that we're going to have to
25 go through, because I made all these changes. So

1 the first three you've given me I marked up a set
2 and sent it either to Albuquerque or here.

3 MR. VILLA: I think it's just this one,
4 Your Honor.

5 (A discussion was held off the record.)

6 MS. JACKS: Your Honor.

7 THE COURT: I'm not seeing in the next
8 instruction the word "verdict." Where is it?

9 MS. JACKS: It's the second page of
10 instruction number 7, the last paragraph. "In
11 reaching a conclusion on a particular point or
12 ultimately in reaching a verdict in this case," and
13 I think what we proposed was "or ultimately in
14 reaching verdicts in this case."

15 THE COURT: I assume there is no problem
16 with that, Mr. Castellano?

17 MR. CASTELLANO: "In reaching verdicts in
18 this case"?

19 THE COURT: Correct.

20 MR. CASTELLANO: No objection.

21 THE COURT: All right.

22 MR. CASTELLANO: And Your Honor, I think
23 there may have been miscommunication this morning
24 when I said there are changes that I was indifferent
25 about. There were changes from their final

1 comments, not from their redline version. So we'll
2 have to double-check that.

3 THE COURT: Yeah, I was asking
4 specifically about the redline, because I had not
5 received any comments from you on the redline. So I
6 did make all those changes, because I took your
7 comments to be that you didn't care.

8 MR. CASTELLANO: So I misunderstood the
9 Court's question. It was whether I had any issue
10 with their comments about the instructions. So I'll
11 have to go back and check those.

12 THE COURT: All right. What's your next
13 one, Ms. Jacks?

14 MS. JACKS: It's the accomplice
15 instruction number 12. This is a simple one. Under
16 "Informant," the first paragraph, at the very last
17 line of the first paragraph under "Informant," "and"
18 should be "any." It's just a typo.

19 THE COURT: Instead of "the testimony of
20 an accomplice, it should be "any accomplice"?

21 MS. JACKS: Oh, no, I'm sorry, Your Honor.
22 I'm in the "Informant" section. At the end of that
23 first paragraph under the "Informant" section, it
24 says "or by prejudice against and defendant," and I
25 think it's meant to be "any defendant."

1 THE COURT: Okay. We got it. Any
2 objection to that, Mr. Castellano?

3 MR. CASTELLANO: No, Your Honor.

4 MS. JACKS: Number 13, this is really just
5 a typo. In the second sentence, "The Government has
6 entered into plea agreements with these alleged
7 accomplices." I think there should be a colon
8 rather than a comma before the list.

9 THE COURT: Is that all right with you,
10 Mr. Castellano?

11 MR. CASTELLANO: I'm checking that one
12 right now, Your Honor. Repeat that one more time.

13 THE COURT: On the jury instruction what's
14 now 13, we're listing out accomplices. Ms. Jacks is
15 suggesting instead of a comma, we just put a colon
16 there.

17 MR. CASTELLANO: We agree.

18 THE COURT: Ms. Jacks.

19 MS. JACKS: Jury instruction number 16,
20 second paragraph, three lines up from the bottom,
21 where it's talking about Government officials agents
22 and informants. We suggest "Government officials
23 comma agents comma or informants," so that
24 "Government" modifies officials, agents, and
25 informants.

1 THE COURT: So you want a comma after
2 "officials"?

3 MS. JACKS: And take out the "or."

4 THE COURT: Okay.

5 MS. JACKS: Then a comma after "agents."
6 And that's it on that instruction.

7 THE COURT: Is that acceptable, Mr.
8 Castellano?

9 MR. CASTELLANO: We're looking at that
10 right now, Your Honor.

11 THE COURT: All right.

12 MR. CASTELLANO: Yes, we're fine with that
13 change.

14 THE COURT: All right, Ms. Jacks.

15 MS. JACKS: Thank you. There is an
16 instruction at page 31 that's not numbered. It's
17 this instruction about summary charts. We just
18 think that should come out. There is no number on
19 it.

20 THE REPORTER: It's what number? I can't
21 hear you.

22 MS. JACKS: It's number 18. The title of
23 the instruction is on the previous page, page 30.

24 THE COURT: So you want the instruction
25 out?

1 MS. JACKS: Well, I think that that
2 summary -- there was only one summary chart, right,
3 and I think it wasn't admitted.

4 THE COURT: Can you live with taking this
5 instruction out, Mr. Castellano?

6 MR. CASTELLANO: Was Rudy Perez' -- were
7 those medical charts or calendars admitted?

8 MR. VILLA: The calendar was admitted. I
9 don't know if it's a chart or a summary, but I don't
10 necessarily have an objection to leaving it in for
11 that purpose.

12 MS. JACKS: I don't either.

13 THE COURT: Just leave it in, Mr.
14 Castellano?

15 MR. CASTELLANO: Yes, sir.

16 THE COURT: All right. We'll just leave
17 it in, then.

18 MR. VILLA: We just have to adjust the
19 number off the previous page.

20 THE COURT: Yeah. We've just done that.
21 I apologize.

22 Ms. Jacks.

23 MS. JACKS: The next one is number 29. Is
24 that right? Yeah. So I think the date in item
25 number 3, which I think is referencing the day of

1 the Molina homicide, should be March 7, 2014. There
2 is no actual date in there. It just reads "March,
3 2014."

4 MR. CASTELLANO: I believe the conspiracy
5 was in March of 2014, and I think the murder itself
6 was March 7, 2014. So I think there are two things
7 referenced in the indictment.

8 MS. JACKS: What does the indictment say
9 about dates? Does it say March 6th and 7th, or does
10 it say March 2014?

11 MR. CASTELLANO: I think it's March 2014
12 for the conspiracy. We're looking up the indictment
13 now.

14 MS. JACKS: And I believe that Mr. Lowry
15 and Ms. Duncan had an issue with the March 9, 2017,
16 date.

17 MR. LOWRY: Yes, Your Honor.

18 THE COURT: Hold on a second. Let me get
19 in the objection. Which count are you on? Number
20 7?

21 MS. JACKS: I'm on jury instruction 29,
22 which is the conspiracy instruction. And so under
23 number 3, it's the date of Count 6 and then the date
24 of Counts 9 and 10.

25 THE COURT: Well, okay. Which count,

1 though, are you looking at?

2 MS. JACKS: Six.

3 THE COURT: All right. Now, on the
4 indictment I think what we have over on page -- I'm
5 sorry, what we have on the indictment page is March
6 7.

7 MS. JACKS: Right. That was my
8 recollection. That was what I thought the change
9 should be.

10 THE COURT: Is that what you want it to
11 be?

12 MR. CASTELLANO: Count 6 alleges March of
13 2014. Count 7 alleges the specific date of March 7,
14 2014.

15 MS. JACKS: In the indictment?

16 MR. CASTELLANO: Yes.

17 MS. JACKS: All right. Then I guess it
18 should stay how it is, then, because this is the
19 conspiracy. Fine. And I think that Team Baca has
20 an issue with the March 9, 2017, date.

21 THE COURT: All right. Which instruction
22 are you looking at, Mr. Lowry?

23 MR. LOWRY: The same one on page 52, jury
24 instruction 29 on numeral 3. This happened in New
25 Mexico. We suggest the March 9, 2017, be taken out

1 and replaced with the date of the filing of the
2 indictment, which would be December 1st, 2015.

3 THE COURT: Well, the problem is that the
4 actual words in that -- this is my memory, the
5 actual words in the second amended indictment say,
6 "Up until the second amended indictment." And that
7 date I think is the date of the second amended
8 indictment; right?

9 MS. ARMIJO: Yes, Your Honor, it is.

10 THE COURT: I think the April date is the
11 original indictment. What would you like it to be?

12 MR. LOWRY: Well, I don't think the
13 conspiracy existed past the first indictment.

14 THE COURT: What's y'all's thoughts on
15 that? Because it may have just been an oversight in
16 the draft of the indictment. Do you want to put
17 something closer to the time that the takedown was?

18 MR. CASTELLANO: Well, it wasn't an
19 oversight in the indictment. I mean, that's
20 typically a conspiracy continuing through the date
21 of the indictment, and that was March 9 of 2017. So
22 the question is just whether there's another date
23 that can be plugged in there. But I wouldn't want
24 to limit ourselves.

25 MR. LOWRY: Your Honor, I don't think

1 that --

2 THE COURT: Hold on just a second. The
3 original indictment as to Count 6 does not have any
4 continuing-to point. I don't have -- that's the
5 original indictment? Oh, that's the second
6 superseding. So the second superseding doesn't have
7 any continuing-to date. If we just put that this
8 happened on or about March 2014 -- well, I think the
9 language you're looking at, Mr. Lowry, relates to
10 counts 9 and 10.

11 MR. LOWRY: That's correct, Your Honor.
12 But there hasn't been any evidence at all presented
13 of a conspiracy past December 1st.

14 THE COURT: Well, given that's what the
15 indictment charges --

16 MR. LOWRY: I'm fine.

17 THE COURT: All right. So we'll just
18 leave the dates, then, on this instruction the way
19 it is unless somebody wants to come back to it.

20 Ms. Jacks?

21 MS. JACKS: Well, we also suggested some
22 language for the very end of instruction number 29.
23 And the language that I recall -- it was from the
24 original or one of the first Aryan Brotherhood
25 racketeering prosecutions that was tried in

1 California, but the suggestion was that the Court
2 include a paragraph saying, "Evidence of a
3 defendant's membership in a gang" --

4 THE COURT: Why don't you say it real
5 slowly and we'll type in it. I don't have any
6 problem with this if the Government doesn't. Say it
7 slowly.

8 MS. JACKS: "Evidence of a defendant's
9 membership in a gang, by itself, is insufficient to
10 establish that person's guilt of a crime as a
11 co-conspirator."

12 THE COURT: Any problem with that, Mr.
13 Castellano?

14 MR. CASTELLANO: May we have a moment,
15 Your Honor?

16 We agree to that change, Your Honor.

17 THE COURT: All right, Ms. Jacks.

18 MS. JACKS: Thank you. So the next one we
19 have comments on was jury instruction number 32, and
20 this, again, is the on or about and the dates. So I
21 mean, I don't think this is that critical. So I
22 could live with it the way it is.

23 MS. DUNCAN: Your Honor, we actually for
24 Mr. Baca have a substitute. It includes between
25 2003 and July 13, 2005, for Count 8, and Count 8 is

1 instructing all the other instructions.

2 THE COURT: I don't see that info. Is it
3 down -- the first time, not the second time?

4 MS. DUNCAN: Yes.

5 THE COURT: I know your position, that you
6 still want Count 8. But given I've taken out Count
7 8, can you live with that change, Mr. Castellano?

8 MR. CASTELLANO: Yes, Your Honor. We will
9 obviously object to the removal of Count 8 from the
10 indictment. We actually have an additional call
11 that covers that conduct.

12 THE COURT: All right. So you preserve
13 your position on that, but I'll take that out, that
14 second one. I'm sorry I missed it.

15 Ms. Jacks.

16 MS. JACKS: Number 33, which is the aiding
17 and abetting instruction. In our redline version
18 that we submitted on Sunday, we again suggested the
19 gang language. So it would be that "Evidence of a
20 defendant's membership in a gang, by itself, is
21 insufficient to establish that person's guilt of a
22 crime as an aider and abettor."

23 THE COURT: Just the same language?

24 MS. JACKS: Right.

25 THE COURT: Any objection to including

1 that?

2 MR. CASTELLANO: No objection.

3 THE COURT: I'm looking at the beginning
4 here. I made changes to the beginning of this. But
5 that's not the language that I had written out at
6 the beginning. I think it was going to be limited
7 to Count 7?

8 MS. JACKS: Right. I think it should be.
9 That's only one where aiding and abetting is an
10 issue.

11 THE COURT: I think y'all suggested that,
12 too.

13 MR. CASTELLANO: We did, Your Honor. It
14 only applies to Count 7.

15 THE COURT: I'll just put Count 7 of the
16 indictment. Okay. And you're going to add that
17 there. Okay. I don't know where those changes
18 went. How does your language -- read your language
19 again.

20 MS. JACKS: The suggested addition to
21 aiding and abetting? "Evidence of a defendant's
22 membership in a gang, by itself, is insufficient to
23 establish that person's guilt of a crime as an aider
24 and abettor."

25 THE COURT: All right. Ms. Jacks.

1 MS. JACKS: I have instruction 35 turned
2 sideways. That's a duress -- right. That's the
3 duress instruction. I think that was just for --

4 MR. VILLA: Yes, Your Honor, with respect
5 to -- do you have something on 34?

6 MS. DUNCAN: We had a small correction on
7 number 34. In the very first sentence there is a
8 comma after Mr. Baca's name and I think it should be
9 removed.

10 THE COURT: Any objection?

11 MR. CASTELLANO: I didn't hear that, Your
12 Honor.

13 THE COURT: There's just a comma after
14 "Mr. Baca" on 34, on the first line. Just take it
15 out?

16 MR. CASTELLANO: Yes, that's fine.

17 THE COURT: All right. Now, Mr. Villa.

18 MR. VILLA: 35, is the Court overruling
19 the United States' objection to this instruction?

20 THE COURT: Yes.

21 MR. VILLA: So Your Honor, based on that
22 ruling, Mr. Perez withdraws this instruction.

23 THE COURT: Okay. So 35 will come out?
24 All of 35 comes out?

25 MR. VILLA: Yes, Your Honor.

1 MR. CASTELLANO: I didn't understand that,
2 Your Honor.

3 THE COURT: Well, I guess he first asked,
4 was I overruling your objection to it. And I said
5 yes, I was overruling it. Then he withdraw the
6 instruction. I assume there is no objection to
7 that?

8 MR. CASTELLANO: He's withdrawing duress?

9 THE COURT: Yes.

10 MR. VILLA: And withdrawing 36 too. 36
11 goes with 35, I think.

12 THE COURT: Is that the --

13 MR. VILLA: Preponderance of evidence.

14 THE COURT: Well, I don't think the burden
15 shifts on yours. It only shifts on -- I could be
16 wrong. Did you have the burden on duress?

17 MR. VILLA: Well, according to the pattern
18 instructions, there was a burden of establishing the
19 three elements by a preponderance of evidence, and
20 so I thought that's what -- why 36 was there. I
21 don't know if it applies to inducement.

22 MS. DUNCAN: It does not, Your Honor.

23 MR. VILLA: So I think it can be
24 withdrawn, as well.

25 THE COURT: Well, I think it may apply to

1 the one that Mr. Baca is raising; right?

2 MS. JACKS: I think all he has to do is
3 raise a reasonable doubt.

4 MS. DUNCAN: Yes, Your Honor.

5 THE COURT: Did the preponderance attach
6 to duress?

7 MS. JACKS: Yes.

8 THE COURT: Okay. All right. So I'll
9 take that one out and I'm also going to take out 36,
10 which is the preponderance. Do you agree with that,
11 Mr. Castellano?

12 MR. CASTELLANO: Yes, Your Honor.

13 THE COURT: So that takes care of you on
14 that, Mr. Villa?

15 MR. VILLA: Yes, Your Honor.

16 THE COURT: Ms. Jacks?

17 MS. JACKS: The next one is 39, last
18 paragraph. We think "verdict" should be plural,
19 "verdicts," and "whether it is" should be changed to
20 "whether they are" in that same line.

21 THE COURT: Any objection to those, Mr.
22 Castellano?

23 MR. CASTELLANO: Can I get that change one
24 more time, please?

25 THE COURT: You want to give it again,

1 Ms. Jacks?

2 MS. JACKS: Second paragraph of jury
3 instruction number 39, "verdict" singular should be
4 "verdicts" plural, and "it is" which is referencing
5 the verdicts should be "they are." So that sentence
6 should read, "Your verdicts as to Mr. Sanchez, Mr.
7 Baca, Mr. Herrera, and Mr. Perez, whether they are
8 guilty or not guilty, should not affect your verdict
9 as to any other defendant on any other charges."

10 THE COURT: And this was one of the ones
11 that you wanted the names in there; correct?

12 MR. VILLA: Yes, I believe that is
13 correct. And I think everyone agrees with me.

14 THE COURT: Are those okay with you, Mr.
15 Castellano?

16 MR. CASTELLANO: Yes, Your Honor.

17 THE COURT: Ms. Jacks.

18 MS. JACKS: Instruction 40, third
19 paragraph, first line. Therein "verdict," again, is
20 singular and we think it should be plural. You know
21 what? I think that's wrong, though, because it
22 says, "Your verdict must be unanimous on each count
23 of the indictment." But because there's four
24 defendants, maybe it should be plural. I think it
25 should be plural.

1 MR. MAYNARD: Each verdict.

2 MR. VILLA: Each verdict must be unanimous
3 on each count.

4 MS. JACKS: What I'm saying is: There are
5 counts that charge multiple defendants requiring
6 multiple verdicts.

7 MR. VILLA: Okay.

8 MS. JACKS: So I think it should be "Your
9 verdicts must be unanimous on each" --

10 MR. VILLA: -- "count as to each
11 defendant."

12 MS. JACKS: Maybe what we should do is
13 leave it singular and say, "Your verdict must be
14 unanimous on each count of the indictment as to each
15 defendant charged." Does that make sense?

16 THE COURT: Can you live with that, Mr.
17 Castellano?

18 MR. CASTELLANO: Yes, Your Honor.

19 THE COURT: Read me the first sentence
20 there, just so I make sure I got your changes on the
21 first sentence, because right now it says, "To reach
22 a verdict."

23 MS. JACKS: Right. It should say, "To
24 reach" -- well, I didn't make any changes to the
25 first sentence. I think that is fine. "To reach a

1 verdict, whether it's guilty or not guilty, you all
2 have to agree."

3 THE COURT: Everybody agree on those two
4 sentences now?

5 MS. JACKS: Did you get the changes?

6 MR. VILLA: Read the second sentence.

7 THE COURT: It says, "Your verdict must be
8 unanimous on each count of the indictment as to each
9 defendant charged."

10 MS. JACKS: That's great.

11 THE COURT: Do you want to say, "charged
12 in each count"? I said, "Your verdict must be
13 unanimous on each count of the indictment as to each
14 defendant charged."

15 MR. VILLA: Okay. The last line of that
16 paragraph, should it be, "You will never have to
17 explain your verdicts to anyone"?

18 MS. JACKS: That's right.

19 THE COURT: Any objection, Mr. Castellano?

20 MR. CASTELLANO: That's fine, Your Honor.
21 I just think "the verdict" refers to their decision,
22 but "verdicts" is fine.

23 THE COURT: We'll make that change.

24 Ms. Jacks.

25 MS. JACKS: I think that does it for me,

1 other than the instructions that were offered by the
2 defense.

3 THE COURT: Okay. What do you think?

4 MS. JACKS: Well, I offered an
5 instruction.

6 THE COURT: Oh, yeah. Those two that you
7 offered, and I think Ms. Bhalla offered, I carefully
8 considered those, and I'm not going to include
9 those. Those get very close to being directed
10 verdicts, particularly Mr. Sanchez', and I don't
11 have enough information now to make a materiality.
12 I don't have enough information to make those.

13 MR. VILLA: Your Honor, just for the
14 record, along the same lines, we had moved to strike
15 Billy Cordova at the beginning of the trial for the
16 late disclosure, and Ms. Fox-Young moved to strike
17 Mario Rodriguez' testimony based on late disclosure.
18 We just ask for a ruling from the Court.

19 THE COURT: All right. I will deny both
20 of those motions. We need the materials that came
21 in. I don't know if those were included in the
22 written materials, but I have considered those and
23 will deny it.

24 Mr. Lowry, Ms. Duncan, did you have any
25 additional?

1 MR. LOWRY: Just one grammatical on page
2 24 on jury instruction number 14, Your Honor.

3 THE COURT: The numbering may have
4 changed, so tell me the topic.

5 MR. LOWRY: This is the testimony of a
6 drug abuser.

7 THE COURT: Got it.

8 MR. LOWRY: And because it's in the
9 conjunctive, "and," it should be "may be considered
10 as abusers of drugs," plural.

11 THE COURT: So take out the "and" and put
12 "may be considered to be abusers of drugs"?

13 MR. LOWRY: Where it says, "Julian Romero
14 may be considered abusers of drugs."

15 MS. JACKS: I think he's talking about the
16 second paragraph, the very last line.

17 MR. LOWRY: Right.

18 MS. JACKS: Where it says, "An abuser of
19 drugs," and I think it should just be, "considered
20 to be abusers."

21 MR. LOWRY: Correct.

22 THE COURT: So "Romero may be considered
23 abusers of drugs."

24 Can you live with that, Mr. Castellano?

25 MR. CASTELLANO: Yes, Your Honor. We have

1 two other suggested changes to that instruction.
2 We'd like the addition of Bobby Delgado. He was
3 Carlos Herrera's witness. He said that he had been
4 a heroin user before.

5 THE COURT: Any objection to that?

6 MS. BHALLA: Yes, Your Honor. He
7 testified he's been sober for six years and only
8 takes his medication as prescribed. And there was
9 no cross-examination or impeachment of that
10 statement.

11 MR. CASTELLANO: We've had the same as to
12 Lupe Urquizo and others. He said he had a bad
13 experience with meth and hasn't used since then. So
14 I think if we do that, we have to do it
15 even-handedly.

16 MS. BHALLA: He was impeached about his
17 statements regarding drug use. Mr. Delgado was not.

18 THE COURT: Well, I guess the point is,
19 though, there was a lot of -- if we're going to go
20 back and clean this out, it will take a while for me
21 to review all the statements. So I guess if you
22 insist on him not going in, then the Government is
23 going to insist that we go back in and look at each
24 one of these and see how they're impeached, and I'll
25 have to make rulings individually on those.

1 MR. CASTELLANO: So we would recommend
2 removing Federico Muñoz and adding Bobby Delgado.

3 THE COURT: And why Federico Muñoz coming
4 out?

5 MR. CASTELLANO: I don't recall Federico
6 Muñoz ever talking about his drug use. He talked
7 about drug sales, but not drug use.

8 THE COURT: Any objection to taking
9 Federico Muñoz out?

10 MS. JACKS: Your Honor, I thought his
11 testimony was that he did heroin in prison. So I
12 would object to taking him out.

13 THE COURT: Well --

14 MS. JACKS: This is the first I've ever
15 heard that the Government is moving for that or
16 asking for that.

17 THE COURT: Well, I'm not sure what to do
18 here on this. We're going to have to -- let me ask
19 this, Mr. Castellano. Is your memory different as
20 to the testimony on Mr. Muñoz?

21 MR. CASTELLANO: It is. I could be
22 refreshed, but I remember it differently.

23 THE COURT: Okay. Well, why don't we get
24 somebody start hitting some transcripts and see if
25 we can find that, see if there was testimony on

1 that. I guess on Mr. Delgado, that's a very
2 structural problem because if we're going to go in
3 and say that people had testified that they weren't
4 using drugs anymore should come out, then I think
5 that may take some time and everybody will have to
6 present that evidence one at a time.

7 MS. BHALLA: Your Honor, I think part of
8 the issue, as well, is that the Government witnesses
9 who testified in this case are in custody. And
10 we've had evidence that while they were in custody
11 and while they were working for the Government, they
12 had access to drugs in the cooperator pod, they were
13 buying and selling drugs, and it's all self-admitted
14 testimony that this was going on while they were
15 Government informants.

16 The difference between that testimony and
17 Bobby Delgado's testimony is that Bobby Delgado has
18 been out of custody of his own free will, and there
19 were no --

20 THE COURT: I guess as far as witnesses,
21 though, it just doesn't matter whether they're in
22 custody or not in custody. I'm going to have to
23 make a call as to when they're a drug abuser or not.

24 MS. BHALLA: I understand that, Your
25 Honor, and I understand the situation that the Court

1 is in. But there was no testimony that he was
2 currently abusing drugs nor any questions regarding
3 impeachment of that. I know that it's late in the
4 hour and that the Court has to make a decision on
5 it, but we would object to including him in that
6 instruction for the record, Your Honor. Thank you.

7 THE COURT: Well, it seems to me if you
8 were a drug abuser at one point, you're a drug
9 abuser; it could affect your memory, cognitive
10 skills, and those sort of things. So I'm not going
11 to take it out because he's not an abuser now. If
12 you want to explain that, that he's not an abuser
13 now, you can. But otherwise, I'll leave in it.

14 MR. VILLA: Your Honor, we have the
15 real-time I believe on Mr. Federico Muñoz. I'll
16 let Ms. Fox-Young...

17 MS. FOX-YOUNG: Your Honor, I believe the
18 testimony was that while he was an active member, he
19 said he flirted with heroin and weed. And this is
20 day 13 of the trial.

21 THE COURT: So I'm inclined to put Bobby
22 Delgado in, and leave in Mr. Muñoz. Anybody want to
23 make any further pitches on those?

24 MR. BECK: I think that's right. We
25 didn't recall that testimony. And with that

1 testimony, I think that's right; leave him in.

2 THE COURT: Okay. So I'm going to put
3 Bobby Delgado in and we'll put Muñoz -- does Muñoz
4 have the tilde above the N?

5 MS. ARMIJO: I believe so.

6 THE COURT: I'll put that in. I don't
7 think it has it in right now.

8 MR. VILLA: But then you have to say
9 "Muñoz."

10 THE COURT: Anything further, Mr. Lowry,
11 Ms. Duncan?

12 MR. LOWRY: No, Your Honor.

13 THE COURT: How about you, Ms. Bhalla, Mr.
14 Maynard?

15 MS. BHALLA: We understand the Court's
16 ruling. We'd just like to preserve our objection
17 for the record.

18 THE COURT: Objection preserved.

19 Mr. Villa or Ms. Fox-Young?

20 MR. VILLA: No, Your Honor. Given that
21 it's 5:06, I vote you read the instructions to the
22 jury.

23 THE COURT: How about from the Government?
24 What's y'all's changes? I'm going to need to put
25 those five questions in that I promised Ms. Jacks,

1 so it will take a minute to type those in.

2 What do you have, Mr. Castellano?

3 MR. CASTELLANO: Jury instruction number
4 3, Your Honor, the reasonable doubt. We request
5 that the stock Tenth Circuit pattern instruction --
6 I think their changes had -- and this is probably my
7 fault for misunderstanding the Court's question this
8 morning. But this has things such as "or a lack of
9 evidence," which is in the second paragraph, the
10 sixth line down.

11 THE COURT: I know where they are, because
12 I took your comments to heart and made changes here
13 based upon my questions. Tell me what you can't
14 live with, because I'm not inclined at this time to
15 go back to the Tenth. I was hanging with you until
16 you gave it up this morning, and I guess then I
17 started making the changes.

18 MR. CASTELLANO: That wasn't the knowing,
19 intelligent, and voluntary waiver by any means.

20 THE COURT: Are you going to sign a
21 affidavit of incompetence?

22 MR. CASTELLANO: I say that as a nondrug
23 user.

24 THE COURT: Tell me what you're most
25 troubled by.

1 MR. CASTELLANO: And then the biggest one
2 is the second-to-last line of that paragraph.
3 "There is a reasonable doubt about the truth of any
4 charge." There is no -- the jury is not going to
5 find the truth or nontruth of any of the charges.
6 They have to find them guilty or not guilty of the
7 charge. But the truth of the charges is not any
8 legal term that we use or the jury decides.

9 THE COURT: Well, I think I'm just going
10 to leave it. I made these changes consciously
11 earlier. All right. What else do you have?

12 MR. CASTELLANO: On jury instruction
13 number 7, I believe on page 13, the first full
14 paragraph, last line says, "Or call any witnesses."
15 Each of the defendants called a witness. So I just
16 recommended removing that language.

17 THE COURT: Well, here's my problem. This
18 is a stock Tenth Circuit jury instruction. This is
19 the way it reads. So even in cases where defendants
20 call witnesses, this is the way I read it and the
21 way the Tenth Circuit says to give it. So this is
22 Tenth Circuit stock jury instructions. Maybe the
23 defendants don't care.

24 MS. JACKS: We care. We want it in.

25 THE COURT: Let's just leave it the way it

1 is. It's the way the Tenth has it and that's the
2 way I usually give it.

3 MR. CASTELLANO: Jury instruction number
4 9, I had recommended, "The defendants have been
5 convicted of a felony," but the jury didn't hear
6 evidence that they were convicted of a felony. They
7 can obviously infer that from the fact they were in
8 prison, but there is no evidence that they were
9 convicted of a felony. So I would just recommend
10 the statement, "The defendants have been convicted
11 of a felony," and go from there.

12 THE COURT: I don't think they wanted
13 "defendants." I think this is the way they want it.
14 They want "a defendant," and I think they're most
15 worried, Mr. Baca, about the murder conviction
16 coming in that was the reason for him to be in the
17 first time. So I'd be inclined to leave it the way
18 it is rather than change it, because the defendants
19 have had some sensitivity to this instruction for
20 quite a while. And we kind of hammered out this
21 language. So overruled, unless the defendants want
22 to change it for some reason.

23 MS. JACKS: We don't.

24 THE COURT: Are you comfortable with it,
25 Mr. Lowry?

1 MR. LOWRY: Yes, Your Honor.

2 MR. CASTELLANO: Instruction number 17,
3 we'd ask for the stock instruction. That's one that
4 includes that the recordings were legally recorded,
5 which the Court actually gave to the jury already in
6 trial at least twice.

7 THE COURT: I think the only thing I
8 changed was added this language which I thought the
9 Government was agreeing to on the bottom of it. The
10 rest of it is the same with the exception of since
11 you did not actually hand them transcripts, it says
12 "shown" rather than "given." So I changed "shown"
13 twice in the last paragraph. But the rest of it is
14 stock. What are you troubled by?

15 MR. CASTELLANO: The instruction yesterday
16 started out, the first two sentences, reading,
17 "During this trial you have heard sound recordings
18 and certain conversations. These conversations were
19 legally recorded."

20 THE COURT: Oh, yeah. I did take that
21 out. Well, again, I thought y'all were agreeing to
22 that this morning.

23 MR. CASTELLANO: We weren't, Your Honor.

24 THE COURT: All right. Well, let's just
25 leave it the way it is. I've always felt

1 uncomfortable with that statement anyway. I'm
2 telling them they can consider the recordings. That
3 seems enough thumb on the scale.

4 MR. CASTELLANO: That's as far as we got.
5 I can tell the Court -- let me go directly to
6 instruction number 34. That's the duress
7 instruction.

8 THE COURT: Yes.

9 MR. CASTELLANO: There is no evidence.

10 THE COURT: It's out now. It's withdrawn.

11 MR. CASTELLANO: 34?

12 THE COURT: Yes.

13 MR. CASTELLANO: And 35?

14 THE COURT: Well, 35 was preponderance. I
15 think --

16 MR. VILLA: 35 is duress in the Ninth
17 edition, and 36 is preponderance. And with Mr.
18 Perez' withdrawals, those are out.

19 MR. CASTELLANO: So page 61 on the draft
20 is the unfair inducement instruction.

21 THE COURT: Yeah. That's still in.

22 MR. CASTELLANO: So we object to that
23 instruction. There is no indication of unfair
24 inducement. And as a matter of fact, there was
25 evidence going back to at least, I think, 2013 of

1 predisposition. Roy Martinez and Robert Martinez
2 testified that they agreed with Mr. Baca back then,
3 and then eventually sent letters out. So going back
4 a number of years, there was already predisposition
5 to commit the crime. So that alone would mean that
6 this instruction is not supported by the evidence.

7 THE COURT: Well, I considered your
8 request and of course, I had my antennas up on that
9 testimony. I think there is evidence, so I'll leave
10 it in. And by including it, I was overruling your
11 objection. But so noted.

12 MR. CASTELLANO: Your Honor, for the
13 record -- and I don't want to argue with the
14 Court -- but what was the evidence regarding
15 unfairly causing the commission of a crime? I
16 didn't see any evidence of that. The second
17 paragraph also requires Mr. Baca not to be ready and
18 willing to commit a crime, and that does deal with
19 predisposition. So if he was predisposed to commit
20 the crime, we can't say he was not ready and willing
21 to commit the crime.

22 THE COURT: Well, that's what I think the
23 evidence is -- there was evidence that he
24 continually was talking about in his discussions,
25 his early discussions, about Santistevan, not

1 Marcantel.

2 All right. I'm going to overrule the
3 objection and leave the instruction. It does say --
4 I am inclined to sustain it as to Santistevan and
5 take it out of that second sentence, because it
6 seems to me that I think your focus has always been
7 on Marcantel. So I would take it out of "to commit
8 the murder of Mr. Santistevan," just leave it as to
9 Marcantel.

10 MS. DUNCAN: Your Honor, I think that's
11 fair.

12 THE COURT: Okay. So we'll take out --
13 okay. So it will read, "To commit the crime of
14 conspiracy." Let me get this and read it to you.

15 MR. CASTELLANO: With that change, you
16 would have to remove "as charged in Count 9." So it
17 would read "as charged in Count 10."

18 THE COURT: Okay. I think that was
19 suggested. All right. So we'll make that change.

20 All right. Mr. Castellano.

21 MR. CASTELLANO: There were just a few we
22 were unable to cover with the elements instructions.

23 THE COURT: Would you look at those? Let
24 me type up these five questions, then, and give you
25 a little more time to take a look at those. Let me

1 get these five questions in.

2 MS. BHALLA: Your Honor, while the
3 Government is reviewing that, may I ask for some
4 clarification on the record, if that's all right?

5 THE COURT: Yeah. Let me get organized
6 here to get these five questions in that Ms. Jacks
7 wants.

8 All right. Go ahead, Ms. Bhalla.

9 MS. BHALLA: Thank you, Your Honor. In
10 regards to defendant Herrera's motion to dismiss or
11 motion for mistrial based on what we allege to be
12 Brady and Giglio violations, is it the Court's
13 ruling that the Court is not going to make a ruling
14 on that or --

15 THE COURT: Let me put it this way. I'm
16 going to deny the motion at this time. The way I
17 would prefer to word it is, I'm not going to grant
18 the motion at this time. If you need a ruling of
19 denial I'll give you the motion of denial. If you
20 would prefer to leave it as is, I'm not going to
21 grant the motion at this time, then if you want to
22 pursue it after the trial when we have a little more
23 chance to scour the record -- and I have not been
24 able to plow through the Government's response.

25 MS. BHALLA: That sounds fair, Your Honor.

1 THE COURT: Would that work for you?

2 MS. BHALLA: Yes, Your Honor.

3 THE COURT: I'll just make an oral ruling
4 that I'm not granting at this time. And then if you
5 want to renew it or want me to pick it up after
6 trial -- put it that way -- contact me and we'll
7 either set it for a hearing or I'll issue an opinion
8 and order.

9 MS. BHALLA: Okay. I appreciate that,
10 Your Honor. Thank you. I wanted clarification on
11 that issue.

12 And just following up with that, the Court
13 had requested us to provide a curative instruction
14 in lieu of a ruling on that motion, and we did so.
15 And I understand that the Court doesn't necessarily
16 approve our instruction as requested. But I would
17 ask the Court, given the nature of the situation, to
18 consider an instruction the Court would find
19 fitting, and would request that, Your Honor.

20 THE COURT: I'm not going to do that,
21 because I'm just not prepared to say on materiality
22 and other things of that nature at this point. So
23 I'll just have to go to the jury without any sort of
24 instruction because I'm not convinced that it needs
25 a cure right now. So that may be the subject of

1 post trial issues and disputes, but at the present
2 time I'm not inclined to -- and won't give anything
3 curative, because I'm not convinced yet, without
4 further study, whether there is something that needs
5 be cured.

6 MS. BHALLA: I understand, Your Honor.
7 Thank you. We just would like to preserve that
8 request and objection to its being excluded for the
9 record. Thank you.

10 THE COURT: So preserved.

11 MR. VILLA: Your Honor, I was very
12 optimistic, but given the hour, should we let the
13 jury go?

14 THE COURT: It's up to y'all. I don't
15 know how much more we have to go, but let me ask you
16 this. Ms. Jacks, on your questions, you've got your
17 five questions? It says, "Did the witness have any
18 relationship with the Government or a defendant?"
19 That's what you want?

20 MS. JACKS: Yes.

21 THE COURT: Do you have anything else, Mr.
22 Castellano?

23 MR. CASTELLANO: I have two quick ones,
24 Your Honor. On jury instruction 25 on page 44, we
25 need to remove Count 8 from that list. It's in the

1 second paragraph.

2 THE COURT: All right. I assume there's
3 no disagreement with that?

4 MS. JACKS: No.

5 MR. CASTELLANO: On jury instruction
6 number 28, page 51, we just need to substitute the
7 word "degree" for "decree" in the first line.

8 THE COURT: Okay. I assume no objection
9 to that. Not hearing any, we'll make that change.

10 MR. CASTELLANO: One issue to consider for
11 the difference between first and second degree
12 murder is either to let us argue if -- that it's
13 either one of them, and if they find them guilty,
14 either of the defendants guilty of that, they can
15 find them guilty of the count. In state court there
16 is usually what they call a step-down instruction,
17 which says, "Consider first-degree murder. If you
18 can't make a decision about first-degree murder, you
19 must consider second-degree murder."

20 I put that out there as a recommendation,
21 or we can just argue, "If you find the defendants,
22 any of them, guilty of either theory of murder, you
23 can find them guilty of the charge."

24 THE COURT: What's the defendants -- just
25 let everybody argue, or you want to put it in the

1 instruction?

2 MS. JACKS: I think it's fine to deal with
3 it in argument.

4 THE COURT: Does that work for you, Mr.
5 Castellano?

6 MR. CASTELLANO: It's fine, Your Honor.

7 MR. VILLA: Your Honor, I agree. And I
8 think 28 ought to look like 27, so it says "for you
9 to find any defendant guilty," instead of "the
10 defendant."

11 THE COURT: So that works for you?

12 MR. CASTELLANO: I didn't hear that, Your
13 Honor.

14 THE COURT: He's saying instead of saying
15 "for you to find the defendant," you can just put
16 "for you to find any defendant."

17 MR. CASTELLANO: Yes, we agree, Your
18 Honor.

19 THE COURT: There was a change at the
20 bottom of this jury instruction number 6, it's now
21 7, that didn't get made. I thought I wrote it on
22 here, but it says, "You may not consider any
23 defendant's decision." I thought -- I think the
24 defense wanted to change it to take out Mr. Sanchez
25 and Mr. Baca and put, "You may not," and then

1 just -- it would just say "consider any defendant's
2 decision not to testify as evidence of guilt." So
3 can I make that change, Mr. Castellano? That's just
4 taking those names out and sort of smoothing, then,
5 the language.

6 MR. CASTELLANO: Yes, Your Honor, that's
7 fine.

8 THE COURT: I assume you still want that,
9 Ms. Jacks?

10 MS. JACKS: Yes, Your Honor.

11 THE COURT: So it will say, "You may not
12 consider any defendant's decision not to testify as
13 evidence of guilt. I want you to clearly
14 understand." That's the way you wanted it.

15 MS. JACKS: Yes.

16 THE COURT: Anything else, Mr. Castellano?

17 MR. CASTELLANO: Yes, Your Honor. I'd ask
18 for -- I understand the commerce language is stock
19 instructions from the Fifth Circuit.

20 THE COURT: Here's the thing we've got be
21 careful with, and we can do some research on this if
22 we want to. There is some differences between RICO
23 interstate commerce and just the commerce that's
24 given in the statute. Now, I don't know -- I
25 couldn't say off the top of my head between VICAR

1 and other, but I think we're going to have to look
2 at it if we're going to go to the stock Tenth
3 Circuit. The VICAR that you have is out of the
4 Fifth. So I think they got it accurately. So if
5 we're going to start going back to the instructions
6 we had days ago, in which we start pulling the stock
7 jury instructions, I think we're going to have to
8 sit down and look and see if those are consistent
9 with VICAR, because I know that in RICO -- and I'm
10 not sure about VICAR -- there are some differences
11 on interstate commerce. I can't tell you off the
12 top of my head, but I've read about them.

13 But I feel pretty confident that the Fifth
14 Circuit's VICAR is probably accurate. Now, you look
15 at their instruction, they start referring to other
16 interstate commerce instructions in theirs, but it
17 didn't seem to me that they added anything.

18 MR. CASTELLANO: It just seems a confusing
19 instruction because it relates to production,
20 distribution, or acquisition of goods or services.
21 It reads, "If it directly engaged in the production,
22 distribution, or acquisition of goods or services in
23 such commerce." So that seems to be fairly limited
24 and narrow as opposed to what commerce is. So we'd
25 have to research that.

1 THE COURT: Well, I don't know what to
2 say. If you want to now start objecting to the
3 Fifth Circuit's pattern instruction, we can do that.
4 But this is what it says: "The enterprise is
5 engaged in interstate" -- it's got "foreign," we
6 took "foreign" out -- "commerce, directly engaged in
7 the production, distribution, or acquisition of
8 goods or services in such commerce. The
9 enterprise's conduct affects interstate and foreign
10 commerce and conduct had a demonstrative connection
11 or link with such commerce."

12 I always thought -- and I thought you
13 indicated to me that what you were going to talk
14 about is distribution of drugs, so the word
15 "distribution" is there.

16 MR. CASTELLANO: I agree. The question is
17 whether -- I guess we can just argue it to the jury;
18 it says goods or services. So typically, if they
19 travel or use communication devices, such as the
20 phone or use the mail, in addition to distributing
21 drugs, those are all items that move in commerce or
22 items which affect commerce. And I agree with the
23 Court that this is the stock Fifth Circuit
24 instruction including that language. I just
25 disagree with that definition of "commerce."

1 THE COURT: What do you want to do? Do
2 you want to take production out? Does that help
3 you, and just have "engage in the distribution or
4 acquisition" and just take out "for services" and
5 just put "goods" and you argue it's drugs? Or what
6 would you prefer to do?

7 MR. CASTELLANO: Yes, I would recommend if
8 we keep this, removing the word "production."

9 THE COURT: Any objection to that? Not
10 hearing any. I wouldn't --

11 MR. VILLA: I'm sorry, what was --

12 THE COURT: Well, I can't imagine y'all
13 would care.

14 MR. VILLA: We don't.

15 THE COURT: It's narrowing the definition.
16 Mr. Castellano just doesn't think there is any
17 evidence of production, so he's saying take out
18 "production" and just put "distribution or
19 acquisition of goods." Are you going to take out
20 "or services" as well, or do you want that still in
21 there?

22 MR. CASTELLANO: We'll leave it, Your
23 Honor, and then if we remove "production," then we
24 can remove the comma between "distribution or
25 acquisition."

1 THE COURT: Okay. Can y'all live with
2 that, defendants?

3 MS. JACKS: Yes.

4 MR. VILLA: Yes.

5 MR. CASTELLANO: I think that's it, Your
6 Honor. Thank you.

7 THE COURT: Well, we've got a couple of
8 choices. I don't mind pushing the jury one time in
9 this case on Friday if that helps you with closings.
10 So I don't mind printing these out and giving them
11 to them. We'll be here at least 45 minutes, I
12 think, but it's y'all's call. If that helps you get
13 it all done on Monday, and that's what you prefer,
14 I'll push them.

15 MR. VILLA: Can we confer?

16 THE COURT: Sure. I'm going to do this.
17 Put this into your calculation. I'm going to print
18 out a set, two sets, one for Ms. Standridge to use
19 on the Elmo, and one for me. And then if we decide
20 to do it tonight, we'll be handing you sets as you
21 go. You've got your set, but we'll continue to
22 print them and bring them to your table. But that
23 will get me started.

24 MR. VILLA: Those will be clean ones that
25 we can use in closings?

1 THE COURT: Yes, those will be.

2 (A discussion was held off the record.)

3 THE COURT: By clean, you're still going
4 to get one with footnotes. That's what you wanted?

5 MR. VILLA: Something that you could show
6 to the jury on --

7 THE COURT: Yes. By clean, you mean
8 you'll get one that I'm reading.

9 MR. VILLA: Yes.

10 THE COURT: You don't need one cleaned out
11 of the footnotes. You can copy that one; right?

12 MR. VILLA: I can live with that.

13 MR. BECK: Your Honor, the Government is
14 just a little concerned, since there are no jurors
15 here from Las Cruces, of sort of angering them here
16 at the last minute before closings.

17 THE COURT: I can take it on my shoulders.
18 I can tell them that I made a decision to do this
19 because it will help the lawyers and the parties get
20 all theirs in. So I can put it on my shoulders if
21 that helps any. I'll take the blame or hit for it.

22 MR. VILLA: The defendants' inclination
23 was to give the jurors the road map of the choice
24 and then let them choose.

25 THE COURT: Okay. Do you want me to have

1 Ms. Standridge go back there and ask them, rather
2 than bringing them here and asking them?

3 MS. JACKS: It's fine with me. I think --
4 do you want to take bets on their decision?

5 THE COURT: Here's the way I would put it
6 to them, and I think this would be true if y'all
7 agree, is have her go back and say, it would help us
8 and help the parties if we gave the instructions
9 tonight. If you don't want to stay, we'll just let
10 you go and do it in the morning. But it may speed
11 things up and smooth things out if we were to do it.
12 Something along those lines.

13 MR. VILLA: And tell them how long
14 instructions are expected to take.

15 MR. BECK: Your Honor, I think that's a
16 good idea. And maybe if we bring them in and we're
17 ready to go, and so that they know, as soon as you
18 tell them that, we're going to start going and be
19 done, versus, you know, just telling them that now
20 and make them think they can wait a while.

21 THE COURT: Is that all right with y'all,
22 to bring them in and I ask them?

23 MS. BHALLA: I think we might get a more
24 honest answer if Ms. Standridge does it in the jury
25 room, Your Honor, just to be candid.

1 THE COURT: I'm not sure I heard -- oh,
2 that was Ms. Bhalla. Okay. Well, why don't you go
3 back there and tell them that we have jury
4 instructions to read to them. And tell them that if
5 they don't want to hear them tonight, we'll let them
6 go. I'll bring them back in and give them an
7 instruction and then let them go.

8 If they would like to stay, it would take
9 me about 45 minutes to an hour to read them, and it
10 might help us in getting things done on Monday and
11 getting the case to them. It might get it to them
12 quicker if we did that tonight. But if they want to
13 go, tell them I'll bring them back in and let them
14 go. It's up to them if they want to stay about 45
15 minutes to an hour and let me give the instructions.
16 It might help us in getting the case to them a
17 little quicker on Monday, and see what they say.

18 THE CLERK: Okay.

19 THE COURT: Y'all give some thought if in
20 fact they want to do this -- you don't have to
21 decide this tonight -- but if they decide they want
22 to hear the instructions tonight, if y'all want to
23 agree on set times, you just flat lay out between
24 the Government and the defendants how long you want
25 and, I'll call it, I'll tell you your time is up,

1 and that might help you get it done in a day. If
2 they come back and they don't want to do it tonight,
3 I don't think we need to consider that.

4 But y'all might give that some thought
5 over the weekend, and I can just enforce whatever
6 agreement y'all reach. And then if y'all script it
7 out, we'll get it done in a day.

8 All right. Let me get a copy for me, a
9 copy for Ms. Standridge. If they don't want to do
10 it, then I'll -- Mr. Mendenhall, come get me if she
11 comes back in.

12 (The Court stood in recess.)

13 (The jury entered the courtroom.)

14 THE COURT: All right. So I understand
15 the jury is ready to go home for the weekend. So
16 we'll let y'all go.

17 Because we are finished with the
18 evidentiary portion of the case and we're taking a
19 weekend break and we're going to be starting with my
20 instructions on Monday morning, I'm going to remind
21 you of a few things that are especially important.

22 Until the trial is completed, and there is
23 still a couple of stages here, so we're not done
24 yet, you're not to discuss the case with anyone,
25 whether members of your family, people involved in

1 the trial, or anyone else. And that includes your
2 fellow jurors. So y'all have gotten to be good
3 friends over the last five weeks. Don't start
4 texting each other or emailing. Just go home and
5 think about something else.

6 If anyone approaches and tries to discuss
7 the trial with you, please let me know about it
8 immediately. Also, you must not read or listen to
9 any news reports of the trial. Again, don't get on
10 the internet and do any research for purposes of
11 this case.

12 And finally, remember that you must not
13 talk about anything with any person who is involved
14 in the trial, even if it doesn't have anything to do
15 with the trial. If you need to speak with me, give
16 a note to one of the court security officers or Ms.
17 Standridge.

18 Monday we're going to be probably going
19 through different phases, and so just bear with me.
20 I'm going to continue to give you these instructions
21 on Monday. So Monday will be a day in which we'll
22 probably be going through a lot of phases. So just
23 bear with me. If I don't say anything, then do keep
24 these things in mind. Y'all have been great. Let's
25 keep up the good work and try to bring it into your

1 hands next week as soon as we can.

2 Thank you for your hard work. Be safe.

3 We'll see you at 8:30 on Monday morning. All rise.

4 (The jury left the courtroom.)

5 THE COURT: All right. If you want to
6 hang around, I've got a paper jam back here, but
7 I'll get you a copy to take home with you. If you
8 don't, tell Ms. Standridge how you want us to maybe
9 try to get you a clean copy so you can start looking
10 at it and get ready for closings. Y'all have a good
11 weekend. Appreciate your hard work and be safe in
12 your travels.

13 (The Court stood in recess.)

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1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 4th day of February, 2019.

14 _____
15 Jennifer Bean, FAPR, RMR-RDR-CCR
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17 United States Court Reporter
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